

## Opinion No. 45-4631

January 8, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. R. F. Apodaca Superintendent of Insurance State Corporation Commission  
Santa Fe, New Mexico

{\*2} This will acknowledge receipt of your request for an opinion on questions relating to expenditures under the "Fire Protection Fund", Section 60-402 of the N.M. S. 1941, amended by Laws of 1943, Chapter 37, Page 54.

The following portion of the above act contains the provisions directly relating to your questions.

"The money so distributed to such cities, towns and villages shall be expended only for the maintenance of such fire departments and purchase and repair of fire apparatus and equipment, under the direction of the chief of the fire department in the city, town or village where said fire department is a volunteer department serving without pay,"

1. May any of the members of a municipal fire department receive a salary, or "pay", from the Fire Protection Fund, the rest of the members being on a voluntary basis and the fire department constitute a "volunteer" fire department?
2. Can salaries, compensation or "pay" be paid to a fire chief, truck driver or other members as "maintenance" from the fire protection fund?

Answer to question one is in the negative. Similar questions have been referred to this office under the above act and the above answer is consistent with former opinions. Any attempt to compensate or "pay" members as "FIREMEN" would be illegal and ground for denying municipalities the right to participate in benefits under the Fire Protection Fund. The act also provides for recovery of sums illegally paid.

"A 'volunteer' is a person who performs services without promise of remuneration, either express or implied, and therefore is not entitled thereto. State v. Henkle, 45 Ore. 430 (78 Pac. 325);"

Answer to question two. If the salary, compensation, or "pay" is for services as "FIREMEN", the answer is in the negative. If the salary, compensation, or "pay" is for services for maintenance and repair of fire apparatus and equipment under the direction of the chief of the fire department, members of the fire department may be employed and paid for rendering maintenance and repair service.

"Maintenance" has been described as a "large term whose meaning depends on surrounding circumstances". The legislature delegated the direction and responsibility

for the expenditure on "maintenance and repair of fire apparatus and equipment in a large measure, to the discretion of the "Fire Chief", subject to the approval of the Superintendent of Insurance.

By THOS. C McCARTY,

Asst. Atty. General

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