

Opinion No. 55-6229

July 15, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Leo P. Schwartz, Administrator, Carrie Tingley Hospital, Truth or Consequences, N.M.

Recently you requested the opinion of this office with regard to the necessity of the Hospital protecting itself by insurance against claims resulting from its normal operations in the existence of premises.

It is our opinion that it is not necessary for the Hospital to carry liability insurance since a claim could not be made against the Hospital without legislative action permitting such claim for the reason that the Hospital as an agency of the State is protected from suit by the doctrine of sovereign immunity.

In this connection, it is noted that § 13-5-3, N.M.S.A., 1953, subsection (d) thereof, specifically provides that the consent of the legislature is required before the Hospital can be sued. Also see *Vigil v. Penitentiary of New Mexico*, 52 N.M. 224.

In spite of the above, it is our opinion that an expenditure for liability insurance is valid and that as a practical matter considering the protection afforded to the public, provided of course that there is a waiver of the defense of immunity contained in the insurance policy, if the agency is in a position to do so, this expenditure is meritorious. You should also realize that nothing contained herein exempts employees from personal liability in the event of negligence and it follows that the state's immunity does not apply to them.

Turning from the subject of public liability insurance, we call your attention to the fact that all officers and boards charged with the custody and control of buildings belonging to the State of New Mexico are required to keep such buildings insured for the benefit of the State against loss or damage by fire. See § 6-1-4.

Trusting that the foregoing will answer your question satisfactorily, I am

By J. A. Smith

Assistant Attorney General