

Opinion No. 57-220

September 9, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Mr. Glenn B. Neumeyer, Assistant District Attorney, County Court House, Las
Cruces, New Mexico

QUESTION

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Is a county or the board of county commissioners liable for injuries sustained by a county prisoner while working on the maintaining courthouse grounds, and, if so, to what extent?

CONCLUSION

No.

OPINION

ANALYSIS

Section 42-2-17, N.M.S.A., 1953 Comp., specifically requires that:

"It shall be the duty of the officers in charge of the jails in all the counties of the state of New Mexico to compel the prisoners who are or may be sentenced to imprisonment in the county jail of their respective counties, to work on the public streets, public roads and around the public buildings situated in the county seats without pay or remuneration whatsoever, during the hours between 9 a.m. and 4 p.m., except on Sundays and legal holidays."

In giving consideration to the subject of public liability for injuries or death sustained during imprisonment, it is pointed out in 41 Am. Jur. at 896 as follows:

"The doctrine of respondeat superior is not applicable to a state, and the latter is not liable to individuals for the misfeasance, laches, or unauthorized exercise of power by its officers or agents, unless it voluntarily assumes liability in such a case. Accordingly, in the absence of statute, the state is not liable to a convict for injuries sustained by him as a result of the negligence of a prison employee, whether the convict is working outside or inside the place of imprisonment. Similarly, in the absence of statute, a county is not liable for injuries to convicts suffered by the latter due to the misconduct or negligence of those having them in charge. The same rule applies to an action against a

county for the wrongful death of a prisoner. Questions as to the liability of a county for injuries to or death of a convict by mob violence is discussed in another article.

"As a general rule, a municipal corporation is not liable for injuries to prisoners or convicts resulting from the negligence of the keeper, guard, policeman, or convict boss in charge of them, for the reason that in the maintenance of a jail and the working of convicts, the municipality is exercising governmental powers and discharging governmental duties, and cannot be held responsible for the negligence or misconduct of officers which it must, of necessity, employ. The same rule has been held to apply when the maintenance of the institution where the injury was sustained was merely permitted and not enjoined by the statute. The reason for the rule is that the maintenance and conduct of such institution is a purely governmental function, to which the rule of respondeat superior does not apply, and it is said that if a prisoner has sustained injury as the result of the negligence of an officer charged with his custody, the injury must be attributed to the cause which occasioned his confinement."

Thus, in the absence of a statute whereby is provided liability and permission to sue a creature of the state, it is our opinion that neither the county nor individual members of a board of county commissioners are liable for injuries sustained by prisoners engaged in maintenance work of court house grounds.