

Opinion No. 58-124

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BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: C. G. Stillinger, M. D., Superintendent, New Mexico State Hospital, Las Vegas,
New Mexico

QUESTION

QUESTIONS

1. If members of the Board of Directors' Hospital Staff employees or other employees of the New Mexico State Hospital are involved in an accident while driving their own privately owned automobiles on hospital business, can the hospital be sued or is the hospital liable in any way for possible resulting property damage or bodily injury?
2. If a member of the Hospital staff transports patients in his private automobile while performing a state duty, to what extent might the hospital be liable either to the patient or his family?

CONCLUSIONS

1. No.
2. None.

OPINION

ANALYSIS

It is our understanding that the five members of the Board of Directors of the New Mexico State Hospital are compensated for mileage to and from the hospital for official board meetings. The Finance Director of the State Hospital and several members of the hospital staff use their privately owned cars occasionally on hospital business. Four field social workers who are based at various parts of the State use their privately owned automobiles exclusively on hospital business and are compensated at the regular state rate.

In view of the foregoing, the Directors of the Hospital wonder whether, if an accident occurs, the state or the hospital would be liable for property damage or bodily injury.

As indicated in our conclusion, we answer in the negative. Basic to this question is a proposition of law stated by the Supreme Court to the effect that the State cannot be

sued without legislative consent. Parr v. New Mexico State Highway Department, 54 N.M. 126, 215 P. 2d 602; Lucero v. New Mexico State Highway Department, 55 N.M. 157, 228 P. 2d 945. Our Supreme Court has further held that a suit against the State Penitentiary in tort was in fact "a suit against the State." The language "right to sue and be sued", as used in a statute creating the State Penitentiary, did not include the right to sue a penitentiary in tort. Vigil v. Penitentiary of New Mexico, 52 N.M. 224, 195 P. 2d 1014.

In view of the foregoing, it is apparent that the hospital would not be liable for the negligent or tortious acts of its employees while operating their privately owned cars while within the scope of their employment.

The above case will also apply to the second instance where a member of the hospital staff is transporting patients and is involved in an accident resulting in injury to the patient. The patient, of course, would have to show negligence before he could recover, and if he shows negligence or a tortious act as we have previously indicated, the State is not liable in a tort action.

We believe that the above fully answers the questions asked in the opinion request but offer the following observation. Most, if not all state agencies purchase property damage and liability insurance on their state owned vehicles. The purpose of doing so is that even though there is no liability on the part of the state, the state may purchase insurance to protect the driving public and passengers who may ride in state vehicles. In the event of an accident where there is insurance on a state vehicle the insurance carrier may be liable up to its policy limits. Under a fleet policy, we believe, additional insurance could be secured covering privately owned vehicles which are used extensively on state business. If such a policy was put into force property damage and personal injury could be compensated for in the event of an accident. Further, the driver of the privately owned vehicle would also be protected while engaged in driving for the state should suit be brought against him individually. The purchase of the additional insurance, of course, is not mandatory. Whether it should or should not be purchased is a matter which the Board of Directors of the New Mexico State Hospital should consider.