

## **Opinion No. 58-212**

October 27, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Howard M Rosenthal,  
Assistant Attorney General

**TO:** Mr. Joe P. Roach, Chief, New Mexico State Police, P. O. Box 919, Santa Fe, New Mexico

### **QUESTION**

#### **FACTS - QUESTION**

"We budgeted for \$ 900 to be used for 'Professional Services'. This was to be used for doctors' fees, attorneys' fees, ambulance calls, etc., for the benefit and welfare of our department. The budget was approved. Now comes a case in which a District Court rendered a liability damage judgment against one of our officers. The officer's appeal, through sanction of the State Police Board of Supervisors, to be handled by the Attorney General, is in need of a court transcript costing approximately \$ 300. Since the transcript would be of value to the Board of Supervisors in their determination of facts in the case, to establish what action they should take if there is a breach of rules and regulations, or if in their opinion the officer should be exonerated, it is their desire to obtain the transcript. Under these circumstances, is it possible for the Board to authorize payment for such a transcript?"

#### **CONCLUSION**

If the transcript is necessary for the Board of Supervisors to weigh disciplinary action, we believe the transcript expense would be expendable in the same fashion as the Board of Supervisors might incur a different type of expense for the same purpose. On the other hand, if the expense of the transcript is to be incurred wholly or partially to assist in the appeal of a judgment rendered personally against a state policeman, then and in that event this office is of the opinion that such moneys cannot be expended either from your budgeted line item of "Professional services" or from any other public moneys appropriated to your department.

### **OPINION**

#### **ANALYSIS**

Sec. 39-2-11 provides for disciplinary proceedings of the State Police. Without citing the exact words of the section, we will state that the section contains the procedure to be followed for disciplining members of the State Police force.

Sec. 39-2-22 indicates the funds appropriated for the State Police "as may be necessary for the expenses and upkeep of the State Police and the carrying out of the provisions of this act . . ." There are also, of course, the various appropriation acts.

Nowhere can we find authority vested in the Board of Supervisors or any other agency to expend public moneys defending a state policeman in the instance of a judgment against him for tortious conduct.

It is, of course, plainly implied that such expense as is necessary may be incurred to enable the Board to make a factual determination in a disciplinary proceeding. It would be absurd to vest disciplinary power in the Board of Supervisors of the State Police and then hamstring such proceedings by refusing to pay the necessary expenses thereof. For this reason, this office is of the opinion that if in their discretion the Board of Supervisors feels a copy of the transcript referred to is necessary such expenditure is permissible.

However, this is not to say that such transcript can be used or supplied for the personal defense of the individual patrolman in a matter foreign to a disciplinary proceeding.

Hence, the negative opinion of this office in the latter instance covered by your question.