

Opinion No. 58-223

November 10, 1958

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

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

QUESTION

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Is the N.M. Board of State Police Supervisors privileged to authorize the coverage of each state police officer with a public liability insurance policy to be purchased by the State covering incidents in which a state policeman might become involved in a civil suit? (This question does not involve vehicle public liability coverage).

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 39-2-2, 1957 Supplement, provides:

"Said department (referring to State Police) shall be managed and controlled by the New Mexico State Police Board. . ."

It is obvious that considerable discretion is vested in the State Police Board to make decisions concerning the operation of the State Police Department. Indeed, we might go further and state that as the agency "managing and controlling" the State Police, the Board is responsible to the State in no small measure for establishing such a climate as will encourage and promote the efficient and successful operation of this most important governmental arm.

This is not to state that no limit to the authority and discretion of the Board is set. The Board is limited by the legislative grant of power among other things.

More specifically, relating to your inquiry here, we are of the opinion that in the absence of legislative authority, the Board may not waive the State's sovereign immunity from suit. This latter doctrine is too well established in New Mexico by our Supreme Court to require citation. Therefore, as to the proposed insurance, it is our advice that the

enclosed letter from this office, dated July 28, 1958, which is attached hereto as part of this opinion be observed strictly.

Although the State's immunity does now require the liability insurance made the subject of this inquiry, we believe a substantial advantage to the State does attach. An efficient police organization is an integral part of good government. If the discretion of the State Police Board so inclines, public liability insurance calculated to relieve a police officer from personal responsibility for zealous (or even over-zealous) duty performance is establishment of such favorable "climate" as is reasonable.

A police officer frequently finds split-second decision necessary. His function, primarily, is the preservation of life and property. Many are the factors to be considered by the officer. Without attempting to detail all of these factors, this office believes it would be an absurdity to require a state policeman, in the performance of his duty, to weigh his actions in the light of a jury's opinion thereof made months after the event under the deliberate circumstances of a court of law. If the State Police Board is of the opinion that the state policeman's use of force should not be subject to review involving his personal responsibility, this office believes such lies within the function of the Board, The effectiveness of the State Police is the basic responsibility of the Board.

It has been said that public liability insurance will tend to encourage state police violation of private right. Without agreeing with this argument, or even weighing it, we think the disciplinary function of the Board is sufficient to enable it to eradicate the possibility.

It has been noted that benefit of the liability insurance accrues to the public--and that the appropriation of the State Police Department is not akin to a public welfare appropriation. While this cannot be gainsaid, it is answered by the fact that the public welfare is not the primary purpose of this insurance. It is merely an incidental benefit by way of third party beneficiary principle. The primary purpose of the insurance is to further the efficient operation of the State Police. Hence, this office is of the opinion that the State Police Board is authorized to secure public liability insurance to be purchased with the end in view of covering incidents in which a state policeman might become involved personally in civil suit as the result of his employment.