

## **Opinion No. 58-239**

December 22, 1958

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

**TO:** C. G. Stillinger, M. D., Superintendent, New Mexico State Hospital, P. O. Box 1181,  
Las Vegas, New Mexico

### **QUESTION**

#### QUESTION

If a state institution constructs a drainage works which will affect land owners below the said drainage works, would the said state institution be in any way liable for damages?

#### CONCLUSION

See Opinion.

### **OPINION**

#### ANALYSIS

We are informed that the New Mexico State Hospital will shortly start construction on some internal roads and drainage for the hospital area proper. The water that will be collected in the proposed new drainage system will end up in the ravine that the water is presently going into, but at a different point. We are told that there will be no more water collected under the old system nor will any private property be involved that is not presently involved.

Notwithstanding the foregoing factual situation we are asked whether the hospital would be liable for property taken or damaged should water collected under the new system adversely affect property rights below or above the drainage system.

We are of the opinion that Section 22-9-22, N.M.S.A., 1953 Compilation is controlling in the event that land owners below the hospital grounds have their property taken or damaged by the new drainage system.

Section 22-9-22 states as follows:

"Any person, firm or corporation authorized by the Constitution or laws of this state to exercise the right of eminent domain who has heretofore taken or damaged or who may hereafter take or damage any private property for public use without making just compensation therefor or without instituting and prosecuting to final judgment in a court

of competent jurisdiction any proceeding for condemnation thereof, shall be liable to the owner of such property, or any subsequent grantee thereof, for the value thereof or the damage thereto at the time such property is or was taken or damaged, with legal interest, to the date such just compensation shall be made, in an action to be brought under and governed by the Code of Civil Procedure of this state; Provided that this act (22-9-22, 22-9-23) shall not apply to or affect any telephone line, telegraph line, electric light or power transmission line."

The provisions of this section are clear and unambiguous. Should property owners below the hospital grounds have their property taken or damaged without just compensation, the owner of such property could institute legal action to recover a judgment for the property taken or damaged. Property owners claiming to be adversely affected will have to show that additional waters have been cast on their lands, however, to recover. Compare **Martinez v. Cook**, 56 N.M. 343 (1952).