

Opinion No. 60-231

December 27, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Charles L. Craven Assistant District Attorney First Judicial District Aztec, New Mexico

QUESTION

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Is a District Attorney or an Assistant District Attorney precluded by § 17-1-3, N.M.S.A., 1953 Compilation (P.S.), from representing a plaintiff in an action to recover a sum of money payable under the terms of an accidental death benefit provision in a life insurance policy where the decedent's death is caused by an automobile accident?

CONCLUSION

No.

OPINION

{*655} ANALYSIS

The section of the statutes of which you request an interpretation is § 17-1-3, N.M.S.A., 1953 Compilation (P.S.), which provides, in part, as follows:

" . . . neither a district attorney nor any of his assistants shall represent a party plaintiff or party defendant in any civil action wherein a claim is made for damages growing out of an automobile accident occurring within his judicial district and violation thereof shall be grounds for removal from office."

It is our conclusion that the fact situation which forms the basis of your request does not fall within the prohibition of the above quoted statute. We do not believe that the action which you describe is a claim for damages within the meaning of the statute.

Black's Law Dictionary defines "damages" as follows:

"A pecuniary compensation or indemnity which may be recovered in the courts by any person who has suffered loss, detriment or injury whether to his person, property or rights **through the unlawful act or omission or negligence of another.**" (Emphasis supplied)

Applying this definition to the claim under consideration, it will be apparent that the liability of the insurance company is in no way contingent upon the negligence or culpability of the deceased or the operator of the other vehicle and hence there would seem to be an absence of the factors which led the Legislature to enact the provisions set forth in the captioned section of the statutes. The condition precedent to the insurance company's duty to pay is death of the insured. The fact that death occurred as a result of an automobile accident is not pertinent to the issue of liability. For that reason, it is highly improbable that the question of negligence or other unlawful acts would be considered in the litigation that you describe.

We, therefore, conclude that there would be no conflict of interest such as the above statute is intended to prevent.

By: F. Harlan Flint

Assistant Attorney General