

Opinion No. 64-79

June 8, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Donald J Wilson, Assistant Attorney General

TO: Mr. Glen J. Walker, Superintendent, New Mexico Boys' School, Springer, New Mexico

QUESTION

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Is the New Mexico Boys' School liable for damages done to a private residence by an escapee from such institution?

CONCLUSION

No.

OPINION

ANALYSIS

The facts of this case indicate that an inmate of the New Mexico Boys' School, located at Springer, escaped therefrom and subsequently broke a window at a private residence. The owner of such residence has now presented a claim to the School for the cost of replacing the window. The real question is whether the State is liable for the torts of an inmate who has escaped from a state institution. It is our opinion that this question must be answered in the negative.

There is no question that the New Mexico Boys' School is a state institution (Article XIV, Section 1, New Mexico Constitution) and therefore a governmental agency which cannot be sued in the absence of specific legislative permission. **Vigil, et al v. Penitentiary of New Mexico**, 52 N.M. 224. We have not found any statutes granting such permission under the conditions as set forth in this fact situation.

In **Vigil v. Penitentiary of New Mexico**, supra, the question was whether an individual may maintain an action in tort against the Penitentiary. This question was answered in the negative on the ground that an action against a state institution is in effect an action against the state and by the overwhelming weight of authority such cannot be maintained, absent specific legislative permission.

In 7 C.J.S. Asylums, § 39, Pages 150, 151, the rule with reference to liability in tort of institutions such as the State Penitentiary, is set out as follows:

". . . such an institution being a mere instrumentality of the state government, brought into being to aid in the performance of governmental duty, the rule of respondent superior does not apply to it; and, therefore, it cannot be made to respond in damages for a personal injury inflicted on another by one of its inmates or employees, although such injury results from negligence or malicious acts on the part of such inmate or employee. The liability for such acts is on the individual personally guilty of the negligence or misconduct causing the injury. This has been held alike as to injuries sustained by an inmate through the negligence or wrongdoing of its employees; as to injuries to third persons by reason of negligent or wilful misconduct of employees or of inmates; and as to injuries done employees by inmates."

Therefore, for the foregoing reasons, it is our opinion that the owner of the private residence does not have a valid claim against the state and such claim should not be paid.