

Opinion No. [30-49]

July 19, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Hon. E. K. Neumann, City Attorney, Carlsbad, New Mexico.

MUNICIPAL CORPORATIONS -- Liability for torts. § 90-623, Code 1929.

OPINION

I have before me yours of the 17th inst. in which you request an opinion as to the liability of a municipal corporation for tortuous acts of its employees and officers done while performing a duty imposed upon them.

Any specific case of tort would, of course, be determined by the particular acts and circumstances. New Mexico has a statute relative the liability of municipalities for torts. I refer to Section 90-623, Compilation of 1929, as follows:

"Liability for torts. No personal action shall be maintained in any court of this state against any member or officer of any municipal corporation in this state for any tort or act done, or attempted to be done, by such member or officer, when done by authority of such municipal corporation, or in execution of the orders thereof; in all such cases the municipal corporation shall alone be responsible; and any such member or officer may plead the provisions of this section in bar of such action whether the same be now pending or hereafter commenced."

This act was before the Supreme Court in this State in the case, *Baca vs. City of Albuquerque*, 19 N.M. 472, 145 Pacific, 110. If you have not already examined this case it is possible that the discussion of the case by the court and an examination of the authorities cited by appellants and appellees, references to which are given in the report in 19 N.M., will answer for you your question.