

Opinion No. 31-67

February 24, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. D. W. Thronburg, Asst. State Highway Engineer, Santa Fe, New Mexico.

In re: M. A. Sieber Claim.

OPINION

{*47} I have your letter of February 20, 1931 in regard to the liability of the State Highway Commission on account of injuries sustained by a person, not an employee of the commission, who fell from a truck of the highway department while riding therein as a passenger.

"It is a well settled rule that a state cannot be sued in its own courts, or in any other, unless it has expressly consented to such suit" 25 R. C. L. p. 412, sec. 49.

"Accordingly, suits against officers of a state as representing the state in action and liability where the state, although not a party to the record, is the real party against which relief is sought, and where a judgment for the plaintiff although nominally against the defendant as an individual, could operate to control the action of the state or subject it to liability, are suits against the state" 25 R. C. L., page 413, sec. 50.

It has been held that the State Highway Commission is an agent of the state not subject to suit in a tort action -- *Carpenter v. Atlanta & C. A. L. Ry. Co.* 114 S. E. 693, 184 N. C. 400.

Obviously, the case mentioned in your letter would not come under the Workman's Compensation Act as Mr. Sieber was not an employee of the highway department. There is no statute by which the state consents to being sued in such cases, and it would follow that this person has no recourse against the State Highway Commission in the courts.

It appears from Mr. H. A. Daugherty's letter of February 10, 1931 to the Highway Commission that he understands the law on this subject but wishes to know if the Highway Commission voluntarily makes settlement of meritorious claims of the nature described in his letter. I do not know what the policy of the highway department has been in this respect, but without going into an extended discussion of the law, it would seem very doubtful to me that the commission has authority to make such settlements.

By Quincy D. Adams,

Asst. Att'y General