

## Opinion No. 35-914

February 26, 1935

**BY:** FRANK H. PATTON, Attorney General

**TO:** State Highway Commission, Santa Fe, New Mexico.

{\*47} You have asked for our opinion as to whether or not the State Highway Commission is compelled by law to carry Workmen's Compensation Insurance on certain employees of the Highway Commission, the employees in question being the State Engineer and the assistants to the State Engineer. These persons, you have informed us, spend from eighty-five to ninety per cent of their time in administrative duties in their respective offices and practically all of the rest of their time in conferences and consultations with the various District Engineers. They go on the construction projects only occasionally.

The law authorizing the State Highway Commission to carry Workmen's Compensation Insurance on its employees is Section 156-126 of the 1929 code. This section superseded Chapter 100 of the Laws of 1927 and is almost identical.

The Supreme Court of this State in the case of the State of New Mexico, ex rel, Maryland Casualty Company vs. State Highway Commission of the State of New Mexico, \_\_\_ Pacific Second \_\_\_ passed upon the question which you have referred to our office as follows: "In order to invoke the second, appellee is forced to construe L. 1927, c. 100 as mandatory. It contends that the phrases 'is hereby authorized to take out insurance policies' should be held to mean 'is hereby required to take out insurance policies.' We are not impressed with the contention. **It seems plain to us that the statute merely enables the commission to insure its employees if it thinks proper.** It is equally plain that no liability for compensation is imposed upon the commission or upon the state's moneys under its control. The liability is express and goes merely to payment of premiums from the road fund in case the commission in its wisdom or discretion shall have seen fit to take out policies. The 1929 re-enactment made no change in these respects."

From the foregoing decision it seems that the law is well settled that the Highway Commission is under no obligation to insure the employees to which we have referred above but may do so if it sees fit.

By: J. R. MODRALL,

Asst. Atty. General