

Opinion No. 41-3852

July 29, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. H. B. Sellers, Chairman State Fair Board Albuquerque, New Mexico

{*85} This will acknowledge receipt of your letter dated July 24, 1941, requesting an opinion from this office as to whether or not the State Fair Association is responsible for personal injuries which might occur due to any negligence of the employees, or due to any structural defects of any of your buildings at the State Fair Grounds.

Even though, as set forth in Chapter 127 of the 1929 Compilation and Section 127-202 of the 1938 Supplement, the State Fair Association is made a body corporate with the right to sue and be sued, it is my opinion that said association would not be responsible for personal injuries. The weight of authority seems to be that apart from the liability of the state or its agencies to suit, there {*86} is no liability on the part of the state or its agencies for tort; that in order to hold the state or its agencies liable for negligence or misconduct of its officers or agents, liability must appear in clear and unambiguous language, and that a statute merely authorizing suit does not render the state or its agencies liable in tort. States, 59 C. J. 195, 196, Sec. 339 and 340; State Highway Commission vs. Knight, 154 So. 263, 170 Miss. 60; Collins vs. Commonwealth (Pa.), 106 Atl. 229; Asylums, 7 C. J. S. 150, Sec. 9; Leavell vs. Western Kentucky Insane Asylum, 91 S. W. 671, 122 Ky. 213, 4 L.R.A. (N.S.) 269, 12 Ann. Cas. 827; Maia vs. Eastern State Hospital, 34 S. E. 617, 97 Va. 507, 47 L. R. A. 577.

Ordinarily, state officers are not liable individually for torts arising from official acts or omissions, although they may be held liable for positive wrongs or culpable negligence attributable to them personally, as in the case of a state officer driving a state car causing an injury by his own acts. Nor are they liable for the wrongful acts of subordinates. (See 59 C. J. 145; 59 C. J. 196, and 49 C. J. 104)

As to the right of the commission to carry general liability insurance on the plant to cover any contingency that may arise during the course of the Fair, it occurs to me that such a plan would be wise, and in the event your board within its sound discretion deems same advisable, Section 127-104, 1929 Compilation, is broad enough to give implied powers to the commission to carry such insurance.

Trusting that the foregoing sufficiently answers your inquiry, I am,