

Opinion No. 45-4722

May 19, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. A. T. Pfingsten, Chairman Upper Hondo Soil Conservation District Capitan, New Mexico

{*73} Replying to your letter of May 4, 1945, wherein you request an opinion on the following questions:

1. May a member or members of a Board of Supervisors of a Soil Conservation District be held personally liable for damages arising from injury to employees while working for the district?
2. May the members of the Board be held personally liable for property damage or personal injury incurred by district equipment?

I am enclosing a pocket size copy of the Workmen's Compensation Act and Labor Commissioner Act, compiled by the State Labor Commissioner, which I will refer to by sections in answering your questions, and which, no doubt, you will find convenient for reference from time to time.

In answer to your first question, Section 57-902, Compiled Laws of 1941 (being Section 2 in Pamphlet) provides:

"The state and each county, city, town, school district, drainage, irrigation or conservancy district, and public institution and administrative board thereof employing workmen in any of the extra-hazardous occupations or pursuits hereinafter named or described, * * *"

It is our opinion that this section places all liability for damages from injury to employees on the "district", and not the supervisors.

Answer to your second question: In searching through the Workmen's Compensation Act, annotations and {*74} decisions pertaining thereto, we have not found any authority for holding administrative officers liable for property or personal injury incurred by district equipment used by employees of the employer, the "district." If the members of a board do not exceed their statutory authority, and follow the following general rule applicable to public officers, there should be no occasion for personal liability.

22 R. C. L. "Public Officers", Section 153:

"Acts beyond Jurisdiction. -- A total want of jurisdiction will destroy the protection usually given to public officers in regard to their official duties. * * *"

22 R. C. L. "Public Officers", Section 124:

"Duty of Good Faith. -- Every public officer is bound to perform the duties of his office faithfully and to use reasonable skill and diligence and to act primarily for the benefit of the public. In other words, he is bound, virtue officili, to bring to the discharge of his duties that prudence, caution and attention which careful men usually exercise in the management of their own affairs. * * *"

In rendering the above opinion, we have attempted to refrain from suggesting any policy the Board may follow under its general powers to obtain Workmen's Compensation or other liability insurance for personal injury or property damage.

Trusting the above answers your questions, I am

By THOS. C. McCARTY,

Asst. Atty. General