

Opinion No. 57-41

March 4, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: *2* Captain Vandervort *2* New Mexico Mounted Patrol *2* 1302 Osage *2* Santa Fe, New Mexico, Attention: John M. Sands 123 La Media SW, Albuquerque, N.M.

QUESTIONS

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1. Are members of the New Mexico Mounted Patrol covered by any state insurance or compensation plan during periods of service as provided?
2. What classification, for purposes of acquiring group insurance protection, is given a troop of the New Mexico Mounted Patrol?

CONCLUSIONS

1. No.
2. Unit or group.

OPINION

ANALYSIS

The New Mexico Mounted Patrol came into existence with the approval of Chapter 149, Session Laws 1941, which law provided, generally, for the establishment of a voluntary mounted police patrol, whose duties are found in § 9-11-5, N.M.S.A., 1953 Compilation:

"It shall be the duty of the New Mexico mounted patrol and the members thereof to assist in the enforcement of law by cooperating with all law enforcement agencies and regulatory bodies of the state of New Mexico **when requested by them and under their direction and control**; to act as an official bodyguard to the the governor of this state or to distinguished visitors upon the call of the governor." (Emphasis supplied)

Since no provision is found relating to the salaries or other compensation for services rendered, it must be concluded as the legislative intent that all members of the Patrol were to perform in a voluntary and honorary capacity only. Attorney General's Opinion No. 477, June 20, 1932, citing Bingham City, et al. v. Industrial Commission of Utah, 66 Utah 390, 243 P. 113, said:

". . . it was held that a volunteer fireman was not the employee of the city. In that case the city by ordinance had created a volunteer fire department. The city had no voice in the admission of members to such department, or in their suspension or expulsion."

Such is the situation with the herein considered Patrol. The Bingham City case, *supra*, dealt with the question of recovery of damages or compensation under the provisions of the Workmen's Compensation Act.

The New Mexico Workmen's Compensation Act provides at § 59-10-2, N.M.S.A., 1953 Compilation, as follows:

"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 extrahazardous occupations or pursuits hereinafter named or described, . . . shall become liable to, and shall pay to any such workman injured by accident arising out of and in the course of his employment in any such occupation and pursuit, . . ." (Emphasis supplied)

At first glance, two requisites become apparent from the foregoing. First, that some sort of employment contract exists, expressed or implied, and secondly, that the insured be occupied in an extra-hazardous activity incidental to his employment. In keeping with the expressions related in Attorney General's Opinion No. 299, 1931, covering school custodians and teachers, further consideration of the aforesaid second requisite is unnecessary here.

Returning to the instant situation, a trooper or officer of the New Mexico Mounted Patrol, in carrying out duties as provided, is without question engaging in extra-hazardous activities. Is, however, such extra-hazardous duty being performed under any color of an employment agreement? We think not. In *Stevens v. Village of Nashwauk*, 161 Minn. 20, 200 N.W. 927, the Court said:

". . . in the Workmen's Compensation Act it was essential that some compensation be in fact paid or payable to the employee, and that the term employee indicated a person hired to work for wages as the employer might direct and that in this case there was no contractual relations between the volunteer firemen and the city."

Section 5-4-12, N.M.S.A., 1953 Compilation, dealing with the subject of public employee group insurance, provides as follows:

"All state departments and institutions and all political subdivisions of the state of New Mexico are hereby authorized to cooperate in providing group or other forms of insurance for the benefit of eligible employees of the respective departments, institutions and subdivisions; provided that the contributions of the state of New Mexico or any of its departments or the political subdivisions of the state shall not exceed twenty per centum (20%) of the cost of such insurance."

Herein is contemplated a mutual benefit plan made up of members who will contribute to the payment of premiums along with the State. In view of the fact, however, that the troopers and officers of the New Mexico Mounted Patrol have no employer, as such, in their organization, it may be concluded that the aforesaid statutory provision does not contemplate voluntary official organizations.

In replying to the second question put, reference is made to § 58-11-16 (4), N.M.S.A., 1953 Compilation, which provides as follows:

"(a) Blanket sickness and accident insurance is hereby declared to be that form of sickness and accident insurance covering special groups of not less than ten persons as enumerated in one of the following paragraphs:

(4) Under a policy or contract issued in the name of any **volunteer** fire department, first aid, **or other such volunteer group**, which shall be deemed the policyholder, covering all of the members of such department or group." (Emphasis supplied)

Accordingly, we believe that the New Mexico Mounted Patrol may be classified as a unit or group for purposes of acquiring insurance under the above quoted section.