

## **Opinion No. 57-42**

March 7, 1957

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

**TO:** Homer C. Pickens, Director, Department of Game and Fish, Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

1. What precautionary measures must the Department of Game and Fish follow in transporting explosives about the state and through cities and towns?
2. Does the use of explosives by employees of the Department of Game and Fish imperil protection under the terms of the Workmen's Compensation Act?

#### CONCLUSIONS

1. Precautionary measures following the dictates of good judgment, based on experience in handling explosives, and local regulations.
2. No.

### **OPINION**

#### ANALYSIS

The transportation of explosive chemicals or mixtures on public highways is discussed generally in 22 Am. Jur. at page 204, wherein it is pointed out:

"One transporting explosives upon the public highway is negligent if he fails to properly equip the vehicle for the safe transportation thereof, . . .

The specific provisions in our law relating to this subject are found in §§ 40-15-1 and 40-15-2, N.M.S.A., 1953 Compilation, but here, marking and transportation requirements are directed to dealers and public passenger cars; the former requiring conspicuous markings stating the type of explosives packaged and the latter prohibiting transportation of explosives in public passenger conveyances. No restrictions are pronounced which would be applicable to the movement of explosives by individuals or agencies of the state government.

Section 14-21-21, N.M.S.A., 1953 Compilation, grants power to cities, towns and villages as follows:

"To regulate and prevent storage and transportation of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine petroleum, or any of the products thereof, or any other combustibles or explosive material. . . ."

Similar provisions are found in §§ 14-22-2 and 14-23-1 relating to towns and villages.

In view of the expressions of our state law, it is our opinion that the Department of Game and Fish should conduct its transportation and storage of explosives in accordance with the dictates of good judgment based upon knowledge and experience in the handling of same. Where transportation or storage is through or in any city, town or village, the regulations locally provided should also be observed.

The use or handling of explosives by employees of the Department of Game and Fish does in no way imperil the protection provided such employees by the Workmen's Compensation Act. Specific coverage is found in § 59-10-10, N.M.S.A., 1953 Compilation, wherein is enumerated extra -hazardous occupations under the Act, and which states in part:

"The extra-hazardous occupations and pursuits to which this act is applicable are as follows: . . . ; and all employment wherein a process requiring the use of any dangerous explosive or inflammable materials is carried on; . . . ."

It is hoped that the discussion herein fully answers your questions.