

Opinion No. 58-93

May 2, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Mr. A. L. Porter, Secretary-Director, N.M. Oil Conservation Commission, Santa Fe,
New Mexico

QUESTION

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The Oil and Gas Commission has been billed in the amount of \$ 468.00, said amount allegedly due for expenses incurred in painting and cleaning floors of a building which the Commission leased. Is the Commission obligated to pay such expenses?

CONCLUSION

No.

OPINION

ANALYSIS

On March 17, 1958, the New Mexico Oil Conservation Commission was billed in the amount of \$ 468.00 for expenses incurred in painting the inside of a building and cleaning floors of a building occupied by the Commission on a lease basis. We have been informed by the said Commission that the building during the time that they were the tenant received only normal wear and tear. Based on the foregoing assumption, our answer is in the negative. A tenant holding under such a tenancy is obligated to treat the premises in such a manner that the estate may revert to the landlord undeteriorated by any wilful or negligent act. **Mitchell v. Thomas**, 91 Mont. 370, 8 P. 2d 639 (1932). A tenant is bound to make only tenantable repairs; he is not liable for the ordinary wear and tear to the premises which is incident to the reasonable use and occupation of the property, 4 Thompson, Real Property, § 1611.

The bill in the amount of \$ 468.00, which allegedly constituted expenses incurred in cleaning the floors and painting the inside of the premises occupied by the Oil Conservation Commission, certainly appears to be a bill for repairs necessitated solely by reason of ordinary wear and tear and the passage of time.

We feel that not only does the Oil Conservation Commission have no legal liability in respect to the bill submitted, but that payment of the bill might be contrary to the provisions of Article IX, § 14, of the New Mexico Constitution.

Lastly, if it can be maintained that the damage claimed is a result of wilful or negligent action, we wish to point out that the State cannot be sued in tort without its consent. **Vigil v. Penitentiary**, 52 N.M. 224, 195 P. 2d 1014; **Eyring v. Board of Regents of New Mexico Normal University at Las Vegas**, 59 N.M. 3, 277 P.2d 550.