

Opinion No. 60-239

December 28, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Capt. A. P. Winston, Jr., Chief, New Mexico State Police P. O. Box 919 Santa Fe, New Mexico

QUESTION

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1. Can any member of the New Mexico State Police authorize a member of the New Mexico Mounted Patrol to accompany him on missions of the State Police for the purpose of training the member of the Mounted Patrol, when, in fact, no emergency is known to exist at the time?
2. Would the member of the Mounted Patrol in such a case be covered by the Workmen's Compensation Insurance of the New Mexico State Police?

CONCLUSIONS

1. See analysis.
2. See analysis.

OPINION

{*664} ANALYSIS

The authority of the New Mexico State Police to call upon members of the New Mexico Mounted Patrol for assistance is contained in, and limited by § 9-11-6, N.M.S.A., 1953 Compilation, which reads as follows:

"Members of the New Mexico mounted patrol may be detailed to assist and render aid in specific instances involving law enforcement or other matters when request is made for such assistance and aid by the New Mexico state police or other law enforcement agencies. When acting upon such call members shall be deemed to be the agents or deputies of the authority issuing such request and shall be possessed of the same powers and duties as such requesting authorities."

The statute does not specify whether all members of the State Police may request assistance of the Mounted Patrol, or only particular members of the State Police organization. In our opinion, when the statute refers to the New Mexico State Police

without any qualification, it grants power to any regularly appointed, active member of the State Police to call upon a member of the Mounted Patrol for assistance.

Your question specifies that the missions in question are to be performed for the purpose of training members of the Mounted Patrol. We do not think this purpose was contemplated by law. The Mounted Patrol may only be called upon by the State Police for matters involving law enforcement, to assist and render aid to the State Police, and for other matters related to the function of the State Police. The statute does not contemplate calling upon members of the Mounted Patrol for training purposes, and in our opinion the State Police may not call upon members of the Mounted Patrol for the purpose of giving training to the Mounted Patrol. But where the purpose is law enforcement, or to render assistance to the State Police in a proper function of the State Police, then it is our opinion that any member of the State Police is authorized to call out members of the Mounted Patrol for assistance.

However, since § 9-11-6, supra, does not specifically provide that any member of the State Police may call for assistance from members of the Mounted Patrol, we advise that the State Police Board, under its rule making powers, prescribe the officers who may make such requests. If any member of the State Police is authorized to call out members of the Mounted Patrol, it is easy to see that abuses may result, or that Mounted Patrol members may be called out improperly. We advise that the State Police Board delegate the authority to call out members of the Mounted Patrol to the Chief of the New Mexico State Police and to the officers in charge of the State Police districts, with power in any member of the State Police to call out members of the Mounted Patrol in case of actual emergency.

As a further note of caution, we refer you to § 39-1-9, N.M.S.A., 1953 Compilation, which requires any person appointed as a peace officer to actually receive his appointment in writing before entering upon his duties. This requirement {665} need not be strictly followed in cases of actual emergency where there is no time to deliver such a written appointment, **Eaton v. Bernalillo County**, 46 N.M. 318, 128 P. 2d 738 (1942), but when no actual emergency exists, a member of the Mounted Patrol whose assistance is requested by the State Police must be furnished the request in writing, signed by the officer making the request.

Your second question is fraught with uncertainty. In Attorney General's Opinion No. 58-218, October 31, 1958, we advised that the Workmen's Compensation Insurance of the New Mexico State Police would extend to and cover members of the New Mexico Mounted Patrol who were injured while under the direct supervision of a State Police officer. The opinion assumed that the Mounted Patrol members in question had been properly called out by the State Police. We already observed that, under the provisions of § 9-11-6, supra, any member of the Mounted Patrol who is acting on call of the State Police is deemed an agent or deputy of the State Police. As such, he is a peace officer of the State. Under § 59-10-10, N.M.S.A., 1953 Compilation, all duly elected or appointed peace officers are within the provisions of the Workmen's Compensation Act. Impliedly, if such peace officers are not properly elected or appointed, then they are not

within the provisions of the Workmen's Compensation Act. Thus, the crucial factor is whether the members of the Mounted Patrol are properly called out for assistance. This is the reason that we urged such caution in calling out members of the Mounted Patrol, and suggested that the power to do so be limited to certain State Police officers, and that the appointments be in writing except in cases of actual emergency.

Thus far, we have said no more than that members of the Mounted Patrol who have been duly called out by members of the State Police are **eligible** for Workmen's Compensation coverage. Whether they are in fact covered by the Workmen's Compensation policy now in effect for the State Police is a question that can only be answered by reference to the policy. If the policy covers only regularly appointed, active members of the State Police, it probably does not cover persons who are deputized to assist the State Police. On the other hand, if it includes all persons who may be called out to assist the State Police, such as members of the Mounted Patrol or members of the State Police reserve, then such persons are covered. In the face of such uncertainty, we are reluctant to advise more than that members of the Mounted Patrol who are properly called to assist the State Police are eligible for Workmen's Compensation coverage, but may not be covered by the Workmen's Compensation policy now in effect for the State Police.

By: Norman S. Thayer

Assistant Attorney General