

Opinion No. 64-70

May 27, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Jerry Wertheim, Assistant Attorney General

TO: Finlay MacGillivray, Manager, New Mexico State Fair, P.O. Box 8546, Albuquerque, New Mexico

QUESTION

QUESTIONS

1. What is the extent of liability incurred by the New Mexico State Fair for personal injuries or property damage occurring on its grounds?
2. Does the New Mexico State Fair have authority to procure liability insurance to cover injuries resulting from its alleged negligence?

CONCLUSION

1. See Analysis.
2. Yes.

OPINION

ANALYSIS

To determine the liability which the New Mexico State Fair may incur, one must first ascertain its legal status. Section 45-20-13, N.M.S.A., 1953 Compilation, in pertinent part defines this status as "a body politic and corporate and separate and confirmed as a governmental instrumentality for the purpose of carrying out the provisions of Chapter 46, Laws of 1913 and all amendments thereto and provisions of this act." Thus it is a legal entity which is a part of the State of New Mexico.

That the New Mexico State Fair, as a corporate body of the State of New Mexico, is not liable for its torts has long been recognized by this office. Attorney General's Opinion No. 3852, July 29, 1941. Moreover, the recent case of **Clark v. Ruidoso-Hondo Valley Hospital**, 72 N.M. 9, 380 P.2d 168 (1963), lends support to this position. In 1959 the Legislature of New Mexico saw fit to change this cloak of immunity afforded the State of New Mexico and its subdivisions. Section 5-6-20, N.M.S.A., 1953 Compilation (P.S.) provides that a suit for negligence may be maintained against a public agency or public corporation of the state. However, the judgment will run against such agency or corporation only if it has liability insurance to cover the amount and cost of such

judgment. Therefore, it appears that the New Mexico State Fair would be held liable for the tort of negligence only if it has liability insurance which will cover the liability arising from such injury, and only to the extent of such coverage.

As part of the statute which provided that a judgment for negligence will run against an agency or corporation of the state which has liability insurance to cover it, the Legislature authorized the public agency or public corporation to obtain such liability insurance. The premium for such insurance is to be charged to the respective agency or corporation. Section 5-6-19, N.M.S.A., 1953 Compilation (P.S.). It is the opinion of this office that the legislature intended by the statute which is now designated as Sections 5-6-18 to 5-6-22, N.M.S.A., 1953 Compilation (P.S.) to leave the procurement of the liability insurance to the discretion of the particular public agency or public corporation of the State of New Mexico. This office believes, out of fairness to the public attending the functions of the New Mexico State Fair that liability insurance covering negligence should be procured.