

**Opinion No. [30-103]**

February 8, 1930

**BY:** J. A. MILLER, Assistant Attorney General

**TO:** Mr. P. A. Smoll, Superintendent, New Mexico School for the Blind, Alamogordo, New Mexico.

STATE INSTITUTION -- May carry insurance for workmen.

**OPINION**

In answer to yours of the 5th inst. in which you make reference to the Workmens' Compensation Act, Chapter 113, Laws of 1929, calling attention to the provisions therein relative to public institutions and administrative boards thereof employing as many as four workmen in any of the extra hazardous occupations or pursuits named or described in the act and pointing out the special permission granted in section 26 for the State Highway Department to take off insurance covering its liability under the act and ask whether other state departments and institutions require special authorization for taking out insurance policies, you are advised as follows:

Section 2 of this act specifically includes the state, each county, city, town, school district, drainage, irrigation or conservancy district and public institution and administrative board thereof employing as many as four workmen in any of the extra hazardous occupations or pursuits named or described in the act as coming under the provisions of the act.

Section 3 provides for the filing of an undertaking in the nature of insurance or security for the protection for such workmen and provides further the means by which the judge of the district court in the county in which the workman is to be employed may excuse the filing of such undertaking. This section closes with the specific proviso that the state and its several subdivisions, as above set forth, shall not be required to give such bond security or undertaking.

The purpose of the act, of course, is to provide protection for workmen employed in extra hazardous undertakings. The legislature has given to the judges of the district courts discretionary power to determine whether or not it is necessary for the protection of workmen that the employer file an undertaking in the nature of insurance or other security. In the case of the state, county, or other agency of the state, however, the legislature has determined in advance, without leaving it to the district judges, that no bond or security is necessary for such protection.

We do not consider that the fact that the legislature granted special permission to the State Highway Department to take out insurance is to be considered prohibition upon other state institutions or agencies. As to your institution we are of the opinion that the

taking out of insurance or the not taking out of insurance is a matter of business policy to be determined by the board of regents. Any expenditure of money, however, in the payment of premium or otherwise will necessarily come within the general limitations governing expenditures and will have to be a budgeted matter before the board will be warranted in making such expenditure.