

Opinion No. 43-4233

February 12, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Elliott S. Barker, State Game Warden, Santa Fe, New Mexico

We are in receipt of your letter of February 6, 1943, in which you state that Mr. Antonio Lujan of Pecos was employed at the Lisboa Springs hatchery; that on the morning of January 13, 1943, while en route to the fish hatchery afoot, he slipped and fell in the road near the Valley Ranch before arriving at the fish hatchery, and that he broke his right arm by falling across the ice tongs which he carried. You ask our opinion as to whether or not the Game Department is liable to him for the time lost and the doctor's bill arising out of this accident.

Since the Game Department is an agency of the State, it is not subject to common law liability in a tort action unless a right of action is specifically given by statute. Nowhere in our statutes do I find such a right of action given unless it be under the Workmen's Compensation Act.

By Section 57-912, Sub-section (L), it is provided that:

"The words 'injuries sustained in extra-hazardous occupations or pursuit,' as used in this act (57-901 -- 57-931) shall include death resulting from injury, and injuries to workmen, as a result of their employment and while at work in or about the premises occupied, used or controlled by the employer, and injuries occurring elsewhere while at work in any place where their employer's business requires their presence and subjects them to extra-hazardous duties incident to the business, but shall not include injuries to any workman occurring while on his way to assume the duties of his employment or after leaving such duties, the approximate cause of which injury is not the employer's negligence."

As there is nothing in your statement of the facts to indicate that the Game Commission was negligent, it is my opinion that the Commission is not liable to Mr. Lujan for the time lost and doctor bills.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General