

HATHAWAY V. NEW MEXICO STATE POLICE, 1953-NMSC-116, 57 N.M. 758, 263 P.2d 690 (S. Ct. 1953)

**HATHAWAY
vs.
NEW MEXICO STATE POLICE et al.**

No. 5617

SUPREME COURT OF NEW MEXICO

1953-NMSC-116, 57 N.M. 758, 263 P.2d 690

December 15, 1953

Original Opinion of November 14, 1953, Reported at 57 N.M. 747.

JUDGES

Sadler, Chief Justice. McGhee, Compton and Lujan, JJ., concur. Seymour, J., not participating.

AUTHOR: SADLER

OPINION

{*758} {1} The Attorney General, appearing as amicus curiae, has suggested a rehearing. He does so in order to point out that, as the record stands, judgment was taken against the state as well as the insurer. The state was the employer, to be sure, through its arm or agency, the defendant, New Mexico State Police. But the fact that it was being subjected to judgment went unnoticed when our opinion was filed.

{2} The claimant (appellee) resists the suggestion of amicus curiae that the judgment should be vacated in so far as it awards recovery against the state. His counsel make the contention that the state has in fact consented to be sued under the provisions of the Workmen's Compensation Act. But we find in the Act no express consent by the state to be sued and the consent is not to rest on implication. Unquestionably, the suit as to the employer is one against the state. *New Mexico State Highway Department v. Bible*, 38 N.M. 372, 34 P.2d 295, and *Parr v. New Mexico State Highway Department*, 54 N.M. 126, 215 P.2d 602. See, also, *Taos County Board of Education v. Sedillo*, 44 N.M. 300, 101 P.2d 1027; *Arnold v. State* 48 N.M. 596, 154 P.2d 257; and *Vigil v. Penitentiary of New Mexico*, 52 N.M. 224, 195 P.2d 1014.

{3} The Attorney General as amicus curiae having called to our attention the matter of the judgment against the state and reminded us of its invalidity, the cause is considered

as if upon rehearing. So considered {*759} and on our own motion we rule that the judgment of the lower court against the state should be set aside as void but, otherwise, to stand affirmed.

{4} It is so ordered.