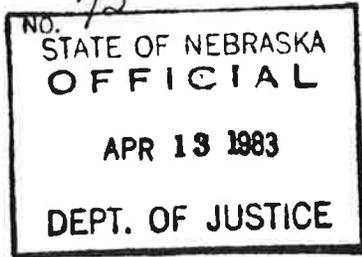


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



April 12, 1983

PAUL L. DOUGLAS
Attorney General
GERALD S. VITAMVAS
Deputy Attorney General
JOHN R. THOMPSON
Deputy Attorney General

SUBJECT: Injury to Probationer or Work Release Inmate
for Government Agency.

REQUESTED BY: Mr. Randy L. Nielsen
Kimball County Attorney

OPINION BY: Paul L. Douglas, Attorney General;
Mel Kammerlohr, Assistant Attorney General.

QUESTION: What agency is liable for injuries occurring to
a person performing work ordered by a court as
part of probation or a sentence of confinement?

CONCLUSION: The agency for whom the person is working at
time of injury, as explained.

This is in regard to your question as to the liability for injuries occurring to a person performing work ordered by the court as a part of a sentence or probation. Neb.Rev.Stat. §48-115(1)(f) (Supp. 1982) specifically makes probationers, working for a governmental body as a condition of probation, employees of such body for the purposes of the workmen's compensation law. Under this section it would appear to be the agency for whom the person was working at the time of injury which would be responsible.

Since there is no mention in this statute as to persons sentenced to confinement, under the doctrine of statutory construction of express mention-implied exclusion, we do not think an employee/employer relationship would exist under this section, as to work release. There could, of course, be some liability for negligence in the premises or the equipment being furnished and the agency liable would undoubtedly be the one upon whom the negligence fell.

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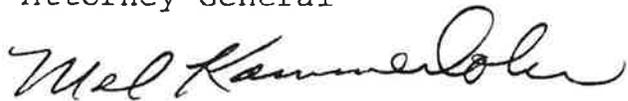
Mr. Randy L. Nielsen
April 12, 1983
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Previous distinctions concerning governmental functions have been abolished and claims may now be made under the political subdivision Tort Claims Act. For specific questions we would refer you generally to Neb.Rev.Stat. §§23-2401, et seq. (Reissue 1977), which contain the exclusive remedy for tort claims against a political subdivision in Nebraska.

We are referring your second question to another assistant who handles these matters and you should be receiving an answer shortly.

Very truly yours,

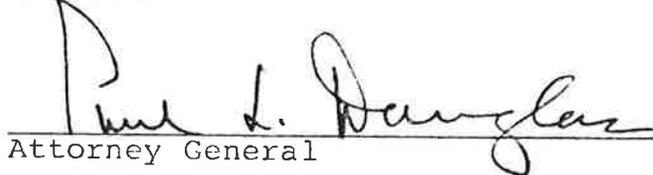
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APPROVED:


Attorney General