

Opinion No. 52-5578

August 21, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Miss Billy Tober, Director Division of Budgets & Finance Department of Public Health Santa Fe, New Mexico

{*286} This is in reply to your letter of August 19, 1952, requesting an interpretation of § 71-206 NMSA. You mention that on August 15, 1952, the County Commissioners of Colfax County refused to budget their full pro rata share of the district health officer's salary as specified in § 71-206. You ask if each county must provide its pro rata share toward the district health officer's fund, regardless of whether the position of district health officer is at all times filled.

That portion of § 71-206 which provides the method of raising the district health officers' fund reads as follows:

"Funds are to be provided as follows: forty-eight hundred dollars (\$ 4,800.00) shall be provided by each of the ten (10) health districts from county health funds prorated in each district among the counties composing that district according to the assessed valuation of each county, and any additional funds required for travel and any increase in salary over the minimum as outlined above, based on qualifications and service as approved by the state board of public health and the district health board, shall be allocated from the general fund appropriation as hereinafter provided. The funds **so required from each county** shall be remitted to the state treasurer, who shall set up a special account to be known as the district health officers fund and shall credit to this fund the funds **so required from the counties** and from the special {287} appropriation from the state general fund. The forty-eight thousand dollars (\$ 48,000.00) to be contributed by the ten (10) health districts and the twenty-one thousand dollars (\$ 21,000.00) special appropriation from the state general fund shall be **appropriated annually** for the purpose of this act." (Emphasis supplied).

It is my opinion that the above quoted language is mandatory and that each county must annually budget and provide its pro rata share of the fund. It is obvious, in my opinion, that the purpose of this annual appropriation is to make certain that funds are on hand so that district health officers may be employed and their salaries paid. Certainly no such assurance can be had that funds will be on hand for this purpose unless an annual budget provision is made by each county for its full pro rata share.

The various counties, as such, have no part in the appointment of the district health officers. That duty falls instead upon the various district health boards under § 71-203 NMSA. If a particular county fears that a district health officer will not be appointed in its district, its remedy is to take necessary steps to see that the district health board performs its statutory duty under 71-203. The county may not, however, ignore the

mandatory language of § 71-206 and refuse to provide its annual pro rata share of the fund.

I trust that this opinion answers your questions on this subject.

For your further information this opinion follows Attorney General's Opinion No. 4322 of January 23, 1943.