

## Opinion No. 53-5868

December 10, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Dr. Gerald R. Clark Department of Public Health Santa Fe, New Mexico

{\*297} In your letter dated December 4, 1953, you refer to Ch. 182, L. 1953, placing certain responsibilities upon district health officers in connection with mental cases and inquire whether the expenses of transportation of patients to a hospital or the asylum are to be reimbursed to the district health officers from the county indigent fund and, if not, from what fund the reimbursement should be made.

§ 5, Ch. 182, L. 1953, appears as § 37-232, N.M.S.A., 1941 Comp., 1935 Supplement, and provides, in sub-section (h) thereof, as follows:

"The order of hospitalization shall state whether the individual shall be detained for an indeterminate or for a temporary period and if for a temporary period, then for how long. Unless otherwise directed by the court, it shall be the responsibility of the district health officer to assure the carrying out of the order within such period as the court shall specify."

This sub-section apparently places upon the district health officers the responsibility of acting as an officer of the court to make sure that the order of the court is complied with by the hospital or state institution relative to the length of time for which the patient is committed.

§ 7 of the same Act, appears as § 37-234, 1941 Comp., 1953 Supplement, and sub-section (a) thereof requires the district health officer, upon the request of a person having a proper interest in the individual's hospitalization, to arrange for suitable transportation for the individual.

It is to be noted that the health officer's duty is to arrange for the transportation rather than to provide the same. In cases where the hospitalization is being paid for privately out of the patient's estate or by relatives, et cetera, the district health officer would necessarily make the arrangements for transportation in cooperation with the person, or persons, who would bear the expenses thereof. If the transportation and expenses are to be charged to the county, as in the case of indigent persons, the arrangements should be made in cooperation with the sheriff's office, who has a budget for payment of such expenses. Sub-section (b) of this section places a responsibility upon the district health officer to arrange for the care, custody and treatment of a person taken into custody, or ordered to be hospitalized, pending his removal to a hospital. The same cooperation between the persons who are paying the expenses, or the sheriff's office, would necessarily follow as in carrying out the provisions of sub-section (a).

Since these various duties are placed upon the district health officer, it should be understood with the district judge that the health officer be notified in all cases involving procedure looking toward the hospitalization of mental patients. Apparently these duties are placed upon the district health officer to insure proper medical care and humane treatment of the patients as provided in § 37-240, 1941 Comp., 1953 Supplement.

§ 37-247, 1953 supplement, which {\*298} is § 20, Ch. 182, L. 1953, relative to costs in connection with indigent persons who are mentally ill, provides that such cases shall be a charge upon the county. This section uses substantially the same language as appeared in the prior law relative to costs in connection with proceedings against insane persons. It is thus apparent that the manner of paying such costs remains unchanged and should be paid out of county funds as budgeted therefor. Costs of transportation to the asylum may continue to be paid out of the general county fund budgeted for sheriff's expenses. Medical fees may be paid out of the court fund or the county general fund as conditions and circumstances may dictate. The indigent fund is a part of the county general fund and may be used for these costs and expenses, if necessary. The Court fund primarily is produced by a county levy and is a part of the county budget so that payments out of this fund, subject to the court's control and orders, would continue to be payments out of county funds within the contemplation of the Act.

It is, therefore, our opinion that ordinarily the district health officers need incur no expenses for which they are to be reimbursed in connection with mental cases, however, if such expenses should be incurred necessarily, they should be reimbursed from county funds as above discussed.

By: C. C. McCulloh

Assist. Attorney General