

Opinion No. 56-6422

April 20, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. A. L. Porter, Business Manager, Los Lunas Mental Hospital, Los Lunas, New Mexico

Recently you requested an opinion wherein you desire to know whether the Los Lunas Mental Hospital may charge parents or guardians of patients for the upkeep of those patients where the parent or guardian can afford to pay all or a portion of the care.

Section 34-3-8, N.M.S.A., 1953 Compilation, states as follows:

"No filing fees shall be charged at the time of filing the petition in such causes, but court costs, transportation and other necessary expenses in connection with such causes may, at the discretion of the court, be taxed against the parents, guardians or persons having custody and control of such mentally defective persons, and if an order is entered committing such person to the institution herein created, then the court shall inquire into the ability of his or her parents, guardians or custodians to contribute to the maintenance and support of such persons, and shall enter such order as shall be found proper for the payment by them, or either of them, to the superintendent of said institution, of a monthly or quarterly sum for such purpose. Where no order of court is entered regarding costs, expenses and maintenance, the same shall be defrayed by the county."

We construe that provision to mean that the court may at the time of commitment, or at any other time, determine the ability of a parent or guardian to support the patient. We suggest that each District Attorney be notified where it is determined by the hospital that a parent or guardian could afford to contribute moneys to the hospital and that an action be filed to require the contribution to the hospital. This determination, of course, can and probably should be made at the time of commitment, but there is clearly no prohibition to a determination at some later date to help to defray the expenses of the care of these patients.

We sincerely hope that this answers your inquiry.

By Fred M. Standley

Assistant Attorney General