

Opinion No. 56-6426

April 23, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Dr. J. Paul Reynolds, President, Board of Osteopathic Examination and Registration, Roswell, New Mexico

We have your letter of March 19th in which you request an opinion concerning the validity of the County Commissioners of Chaves County using monies obtained from a special tax levy to pay the cost of operation and maintenance of a privately owned and operated hospital.

It is our understanding that Chaves County has constructed a county hospital which is known as the Eastern New Mexico Medical Center, and that said hospital was constructed from public funds, including a grant from the Federal government. We further understand that this hospital has been leased to a private organization for operation and maintenance. From your letter, we gather that Chaves County has voted a special 3/4 mill levy under the provisions of Chapter 224, Laws of 1955, for the operation and maintenance of a county hospital. You further state that the Sisters of St. Mary's Hospital have requested that the County Commissioners appropriate money to assist such hospital in its operation and maintenance, based upon the fact that such hospital cares for indigent patients. You also state that the Roswell Osteopathic Hospital similarly cares for indigent patients and also seeks the benefit of county funds for its operation and maintenance.

Chapter 224, Laws of 1955, provides after an election authorizing a special mill levy, that the County Commissioners may make a special 3/4 mill levy for the support and maintenance of a county hospital. It also makes provision whereby the County Commissioners can support a municipally owned hospital where there is no county hospital. It further provides that where there is no county hospital or municipally owned hospital, within the county serving such county, that such County Commissioners can use the mill levy for the purpose of paying another county having a county hospital or a municipally owned hospital, to serve the county which is without a hospital.

We note further that Section 15-48-5, N.M.S.A., 1953, authorizes all counties which have hospitals to lease such hospitals to persons, firms or organizations or corporations upon such terms and conditions as the Board of County Commissioners may determine. The question then becomes whether the County Commissioners can use the authorized special mill levy provided for by Chapter 224, Laws of 1955, to support the county owned hospital which has been leased for operational purposes.

We are of the opinion that Article IV, Section 31, of the New Mexico Constitution, which reads as follows:

"No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state, but the legislature may, in its discretion, make appropriations for the charitable institutions and hospitals, for the maintenance of which annual appropriations were made by the legislative assembly of nineteen hundred and nine."

prohibits the use of public funds for the purpose of supporting any private organization. Article IX, Section 14 of the Constitution would also prohibit the use of public funds to operate a privately leased county hospital.

We are of the further opinion that when Chaves County leased for operation the County Hospital, that it in effect made such hospital a private institution, and under those circumstances the County Commissioners could not use the special mill levy authorized by Chapter 224, Laws of 1955, for the purpose of supporting and operating such hospital. The evident purpose of Chapter 224, Laws of 1955, was to provide a means by which the county operating the hospital itself could pay for such operation. To construe Chapter 224, Laws of 1955, as allowing the County Commissioners to use the funds authorized in this section for the purpose of supporting and maintaining a hospital owned by the county but leased to a private organization, would be in direct violation of Article IV, Section 31, and Article IX, Section 14 of the New Mexico Constitution, and thus make the law unconstitutional.

We are further of the opinion that none of the funds authorized by Chapter 224, Laws of 1955, can be used to support any privately operated hospital, therefore, these funds could not be used to aid and support the Sisters of St. Mary's Hospital at Roswell or the Roswell Osteopathic Hospital.

We call your attention to Section 15-48-6, N.M.S.A., 1953, which provides the means by which the Board of County Commissioners could, by agreement, pay for the care of the sick and indigent persons with a private hospital. However, funds used for the care of the sick and indigent would be on a basis of a contract and it would not be the expenditure of funds for the purposes of operating and maintaining a privately owned hospital.

We are enclosing herewith a copy of Opinion No. 5280 which covers this particular phase of your request.

Trusting we have answered your questions satisfactorily, we remain

By: Paul L. Billhymer

Assistant Attorney General