

Opinion No. 56-6507

August 10, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

In connection with payments made for hospitalization of recipients of Public Welfare assistance, you relate that the Department of Public Welfare for the quarter ending September 30, 1955 paid 77% of certified cost or of \$ 18.50 whichever was lower, and for the quarter ending December 31, 1955, the ratio is 89.2%. Subsequently, and to date, the Department has paid 100% of cost or \$ 18.50 whichever is lower. In connection with this situation you ask our opinion:

". . . as to whether those hospitals that were reduced to a cost of \$ 18.50 by the Special Session Laws and then further reduced by application of the ratio of available funds to budgetary needs, may receive supplemental payments up to the \$ 18.50 level for the period from July 1, 1955 to December 31, 1955, providing that funds in excess of budgetary requirements were available to the Department in the second half of the fiscal year."

Section 13 - 1 - 28.6, N.M.S.A., 1953 Compilation, Pocket Supplement, (Section 7, Chapter 194, Laws 1955) provides, substantially, that the State Board of Public Welfare may reduce the rate of payment of per diem cost to hospitals if the funds available for the preceding quarter for all purposes were insufficient to meet budgetary requirements. At the Special Session of the Legislature it was provided that the Department would not pay for hospitalization at a rate higher than \$ 18.50 per day. Section 4, Chapter 9, Laws, Special Session, 1955. Section 13-1-28.2, N.M.S.A., 1953 Compilation, Pocket Supplement, provides that the Department of Public Welfare is authorized to contract with hospitals for the hospitalization, treatment, and care of any recipient of public assistance and that payment shall be made at a rate determined by the State Board of Public Welfare. It is assumed that the payments made to hospitals for the benefit of Public Welfare recipients for the quarters ending September 30, 1955 and December 31, 1955, were based upon a contract with the various hospitals to care for these recipients at the rates then established by the Board. If this be the case, it is our opinion that the Department of Public Welfare, having contracted with the hospitals for the services at the rates then established, the Department may not now make supplemental payments. This is a matter of contract, and the contract having been entered into on understood terms the payment by the State of a rate above that contracted for would amount to a gift to the hospitals, which in all probability is prohibited by Article 9, Section 14 of the New Mexico Constitution.

I trust the above answers your inquiry.

By: Santiago E. Campos

Assistant Attorney General