

## **Opinion No. 57-117**

May 31, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,  
Assistant Attorney General

**TO:** Stanley J. Leland, M.D., Director, New Mexico Department of Public Health, Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

May a district health officer make a charge for medicine which is not customarily supplied by the Department of Public Health?

#### CONCLUSION

No, unless the Board of Public Health has declared that an emergency exists.

### **OPINION**

#### ANALYSIS

It is our understanding that a district health officer has been asked to treat certain people at a public health clinic who do not have ready access to other medical care. Further, that these people who are predominantly Navajo often are suffering from contagious and communicable diseases which could result in serious complications, making such treatment of an emergency nature. The above persons, though indigent, are not beneficiaries of the Welfare Department, and the charge contemplated will be minimal and in the nature of a reimbursement to the Public Health Officer for drugs issued. It is also our understanding that in some cases a charge of twenty to fifty cents for medical care and for services rendered is contemplated.

Section 12-2-6, N.M.S.A., 1953 Compilation, prohibits private practice of medicine on the part of the various district health officers. Specifically this section states in part:

"No district health officer shall engage in the private practice of medicine, maintain an office for the practice of medicine, nor accept nor receive any fee, gratuity or emolument of any form for rendering medical or surgical service to any citizen of this state, except that permission for such practice may be given by the state board of health in any district, the board of which has declared an emergency to exist."

It is our understanding that the State Board of Health has not declared a state of emergency to exist in the district, and thus it is our opinion that the district health officer

may not accept payment for his services since such would constitute the private practice of medicine and the receipt of a "fee, gratuity or emolument" for rendering medical or surgical services.

In the instant case it would appear that the services contemplated are of a beneficial nature, and are rendered in a remote area where other medical facilities are not available. If in the judgement of the State Public Health Board a continuing emergency exists, perhaps such declaration could be made and a charge made for services rendered.