

Opinion No. 57-254

October 7, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Earl M. Coffee, Administrator, Miners' Hospital of New Mexico, Raton, New Mexico

QUESTION

QUESTIONS

1. "Can the Miners' Hospital of New Mexico sell drugs or medical supplies to people who are not admitted to the hospital as in-patients or out-patients when doctors ask that such be sold to them?"
2. "Also, if this (drugs or medical supplies) cannot be sold to 'outsiders' how about emergencies, or at nights, when the drug stores are closed?"
3. "Under the Public Employees Retirement Association Act, was there at any time a provision whereby an employee would not have to come under the Retirement Act until they had served their probation period?"

CONCLUSIONS

1. No.
2. See opinion.
3. Yes, by regulation, but not by the terms of the Act.

OPINION

ANALYSIS

In response to your first question, reference is made to § 13-6-1, N.M.S.A., 1953 Comp., wherein is declared the purpose of the Miners' Hospital, and, further, the requisites for admission thereto:

"The Miners' Hospital of New Mexico is intended and meant to be for the free treatment and care of resident miners of the state of New Mexico, who may become sick or injured in the line of their occupation; and all lodging and medical care shall be free of charge, as shall all other expenses incurred by the patient, except in cases where such patient is possessed of property and means sufficient to enable him to pay the actual costs and charges incurred by his attendance at such hospital, in which case the board

of trustees may make provision for his being charged and paying such expenses incurred.

"Provided, however, the said trustees, may take in other patients for treatment and care, upon the payment of all expenses therefor, by said patients when the same may be so received and treated without excluding any miners from said hospital."

In Attorney General Opinion No. 5451, 1951, it was pointed out, in keeping with an earlier Opinion, 1915-1916, page 38, that only resident miners, who had not previously discontinued their occupation were entitled to free admission as provided. By the language used in the provisions of the last paragraph of 13-6-1, supra, it is, of course, clear that non-miners may be admitted to the hospital subject first to available facilities so as not to exclude any miner, and, secondly, to payment of all expenses incurred. No provision or implication thereof is suggested for the treatment or supplying of medicines to nonpatients of any class.

Attorney General Opinion No. 4790. 1945, discusses the status of hospitals as drug dispensaries as follows:

"Hospitals, as a general rule, handle various drugs under the direction of qualified persons, solely for the benefit of patients in such hospitals who are under the direct care of various doctors. The drugs handled in hospitals are for the benefit of the patients therein and are not offered for sale to the general public, but are dispensaries, as indicated above."

The Opinion concludes that hospitals are not required to obtain licenses as is otherwise required of public pharmacies and drug stores.

Section 67-9-21, stats., supra, in referring to the requirement for annual registration and licensing of public pharmacies, provides as follows:

"Any person, firm, corporation or copartnership owning, operating, or maintaining a pharmacy, drug store, pharmacy department, prescription laboratory, dispensary, apothecary, wholesale drug business or drug manufactory in violation of this section by failing to secure a permit or license as required shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars (\$ 25.00) and the cost of prosecution, and each and every day that such violation continues shall constitute a separate and distinct offense."

Accordingly, it is our opinion that the Miners' Hospital of New Mexico may not sell or dispense medicine and drugs while operating as a public institution which is not licensed as required under the provision of Art. 9, Chapter 67, N.M.S.A., 1953 Compilation.

Your second question raises possible situations with which many state agencies and institutions may, on occasions, find themselves confronted, that of individual human

emergency. It is our opinion that if life and limb are in jeopardy, certainly, there would be no violation of public law nor policy to render whatever service would be required by the occasion. It is not, however, our opinion that the Miners' Hospital may institute a public service and become competitors of licensed pharmacies on the single premise that there are no local drug stores open for business during certain night time hours.

Question number three, directed to the Public Employees Retirement Act, under the Rules and Regulations duly promulgated and adopted May 15, 1953, the following provisions were found as a part of Rule 1 (b) (1):

"(a) In addition to all persons having membership in the Association as provided by Chapter 162, Laws of 1953, all persons retaining membership by direct contribution as provided by Chapter 167, Laws of 1947, as amended, who continue to make such payments, shall be members.

"(b) The following members shall be exempt from compulsory membership in the Association:

"(1) Employees in occupational classification of a part-time, temporary, seasonal or casual nature, for the entire period of such limited service. The four classifications enumerated shall include any employee who was employed, appointed or hired for a limited period not to exceed six months, or for services which, as shown by past experience, will not be continuous by reason of their seasonal or casual nature. In the event the employment of any employee in one of the foregoing classifications shall be converted by his employer to full time continuous employment in a permanent position, he shall become a member of the Association as of that date."

Under current rules and policy, however, the afore provided exclusion of employees hired for a period running not more than six months has been excluded and is no longer applicable.