

Opinion No. 58-110

May 29, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

TO: Dr. C. G. Stillinger, Superintendent, New Mexico State Hospital, P. O. Box 1181,
Las Vegas, New Mexico

QUESTION

QUESTIONS

1. To what extent and under what conditions must the State Hospital supply witnesses in court proceedings?
2. Can the courts subpoena a specific staff member rather than the Hospital record?
3. Under the Hospitalization Law and the employment arrangements between the Hospital and its professional staff members, are the members required to appear in court as part of the assigned duties?
4. To what extent should the court assume financial responsibility for the payment of expenses and fees to staff members testifying?
5. In the case of a private physician, psychologist or psychiatrist who is used as a consultant on a limited part-time basis, can they be subpoenaed to represent the Hospital and if so who is responsible for payment of fees and expenses?

CONCLUSIONS

1. While the Hospitalization Law contemplates cooperation between the Hospital and the Courts in the matter of determining the mental status of patients, the statutes are silent as to any responsibility delegated to the Hospital in the determination of the legal sanity or insanity of "criminals".
2. Yes.
3. Not by virtue of the Hospitalization Law -- but affirmatively as to the requirements of subpoenas duly issued and served.
4. Expenditures from Court funds are in the jurisdiction of the various Courts.

5. Any witness may be required to attend Court pursuant to subpoena subject to certain limitations having no connection with your inquiry. If fees for witnesses are payable, they are payable as provided by statute.

OPINION

ANALYSIS

Your inquiry appears to be based on Hospital responsibilities in the ascertainment of legal sanity or insanity in the case of persons charged with criminality. Hence, § 34-2-5, which deals with judicial determinations of sanity or insanity for the purpose of admission to the Hospital. etc., has no relevancy. The statutes are silent as to Hospital responsibility in the determination of the mental capacity of those charged with crime. The several statutory enactments controlling Hospital and Court relationships in certain instances, even delineating financial responsibilities therefor, do not pertain to your inquiry. Hence, in answer to question No. 1, this office is of the opinion that only the laws dealing with subpoenas are applicable to staff members in criminal cases just as they apply to other witnesses. In other words, in the absence of law exempting staff members of the State Hospital from subpoena responsibilities, they are subject thereto, no more, no less.

A subpoena, or a subpoena duces tecum, duly issued and served, must be obeyed under penalty as provided by law (§ 20-1-1, et seq.). Also, the Court has substantial authority to set terms and conditions for the production of records. However limiting our discussion to your specific question, we are of the opinion that a subpoena or a subpoena duces tecum, duly issued and served, addressed to a particular person, staff member or not, must be obeyed. Sections 20-1-4 and 5 set out per diem and mileage and for your information these are set forth here:

"20-1-4. Per diem and mileage-Witnesses shall be allowed fees for services in all cases, as follows: For attending any district court, referee, clerk or commission, within the county where the witness resides, for each day, (\$ 1.00) one dollar; for attendance as aforesaid, out of the county, (\$ 2.00) two dollars for each day; for each mile of travel in going to and returning from the place of trial, five cents (5c).

20-1-5. Mileage to and from district court -- Maximum number of compensable days for attending grand jury sessions. -- No witness shall be paid more than five cents (5c) per mile in going to and returning from the district court, nor shall any witness summoned before any grand jury be paid for more than three (3) days' attendance before such grand jury at any one term, nor shall any witness who resides within three (3) miles from the court-house of any county be paid for more than one (1) days attendance before the grand jury of the county where he resides, at any one (1) time; nor shall any witness who resides within three (3) miles from the court-house be paid more than fifty cents (50c) per day for his attendance before the grand jury of the county where he resides."

However, the State, by sovereign privilege, is exempt from payment of the above.

This office finds nothing in the statutes mandatorily delineating relationships between the Hospital and its professional staff members. These relationships are governed by the authority of the Hospital, reflected in the authority of the Board and the Superintendent, to enter upon contracts, written or otherwise, with employees. Unless contrary to law, specific or implied, relationships are as agreed. However, the Board or the Superintendent cannot excuse a staff member from his responsibilities as a citizen to answer a subpoena duly issued and served. Hence our answer to your third question.

The Court Fund is specifically, by law, placed under the Court's jurisdiction. (§ 16-3-22, et seq.). The Office of Attorney General is not authorized to dictate expenditures therefrom in any way save to act as a deterrent in the instance of illegal expenditures. Hence, obviously, we cannot state to what extent a Court "should" assume financial responsibility in accordance with question 4. However, for whatever such comment may be worth, we are of the opinion the Court Fund **may** be used to further the administration of justice in the direction that you suggest. The Courts must use their own discretion.

We do not think the issue of double compensation for a public employee need be considered here in light of the general nature of your inquiry. However, depending on the ultimate outcome of Hospital and Court relationships such consideration may have to be invoked.

While we are at a loss to properly evaluate your phrase in question 5 -- "can they (referring to limited part time basis physicians, psychologists and psychiatrists) be subpoenaed to represent the Hospital . . .?" on the assumption that this means no more than whether part time staff members are as much subject to subpoena laws as are full time members, we are of the opinion that an affirmative answer is correct and that the above quoted §§ 20-1-4 and 5 apply equally to all, full time or part time.

Your kind expression of optimism as to this office working out an equitable solution to your real and serious problem must be declined, not because we are unwilling, but because we are unable.

We have two alternatives to proffer -- the first, that the Hospital by arrangements with the various Courts negotiate a relationship therewith acceptable to both -- the second, that you seek relief at the next Legislature.