

Opinion No. 58-129

June 16, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: The Board of Directors, New Mexico State Hospital, Las Vegas, New Mexico

QUESTION

QUESTION

Does the New Mexico State Hospital Board have authority to establish and enlarge a rehabilitation center in Albuquerque, as a branch facility, for outgoing mental patients?

CONCLUSION

No.

OPINION

ANALYSIS

In your request letter, you asked if there existed any provision preventing the contemplated action. There is none, at least expressly. But, in our opinion, such is not the correct approach. The Hospital being a creature of the State, it behooves us to endeavor to find **authority** for this action; otherwise the same would be illegal.

In Constitution of New Mexico, Art. XIV, Sec. 1, as amended, the Hospital is confirmed as a state institution, and the language ". . . at Las Vegas . . ." is employed. This, however, may be merely descriptive terminology, without the mandatory effect of **itself** confining the Hospital to Las Vegas.

More importantly Art. XIV, Sec. 3(B), as amended, provides for the management of the Hospital under a board with such powers **as provided by law**.

We turn to the statutes. There is no question but what under the grant of powers in Sec. 34-1-1, et seq., N.M.S.A., 1953 Comp., the Hospital Board is vested with considerable discretion. Generally, these sections vest control and management in the Board, which constitutes a body corporate. Sec. 34-1-3 gives the Board power to cause all things to be done necessary ". . . to carry out the provisions of this article . . .".

Nowhere in Ch. 34, Art. 1, either expressly or impliedly, is there a provision authorizing branch facilities in Albuquerque. Consequently, the "necessary" powers clause is of no assistance here.

Sec. 34-1-7 empowers the Board to enact regulations and rules ". . . not inconsistent with the law of the state . . ." in order to govern the Hospital. But we repeat. We find nothing **expressly or impliedly** authorizing branch facilities; and to our way of thinking, a regulation to that effect would be inconsistent with law, **the Constitution limiting the Board to powers provided by law.**

Nor do we believe that Sec. 34-1-2, vesting control in the Board over the erecting and construction of buildings necessary for the Hospital, is authority for your proposal.

Your attention is also directed to Laws 1889, Ch. 138, Sec. 4, p. 324 (English translation), p. 349 (Spanish translation), creating and establishing the asylum (now Hospital), and **locating** the same at or near Las Vegas. While, of course, a Territorial statute, we find nothing in our Constitution nullifying the same.

To the extent Opinion of the Attorney General No. 5628, rendered January 7, 1953, raises contrary implications, it is hereby overruled.

In conclusion, we find no authority for your proposal, but suggest you place this opinion in your legislative file in order that the matter may be passed on when the Legislature next convenes.