

Opinion No. 58-225

November 14, 1958

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

TO: Honorable Dan Sosa, Jr., District Attorney, Third Judicial District, Las Cruces, New Mexico

QUESTION

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Can a tax be levied under Section 15-48-12 and 13 to maintain and operate a hospital in view of the fact that said hospital has been leased to a private corporation?

CONCLUSION

No.

OPINION

ANALYSIS

Under Sec. 15-48-5, there is no question concerning the power of county commissioners to lease county hospitals to persons, firms, organizations, or corporations. However, we must determine, under the statutes cited by you, whether the tax levy can be made to maintain and operate the hospital in question, leased to a private corporation.

Section 15-48-12 (p.s.), authorizing the tax levy, provides:

"(a) The boards of county commissioners in counties in which there are located or are under construction county hospitals on in counties having no county hospital but wherein a municipally-owned hospital is serving in lieu of a county hospital are hereby authorized to levy and collect annually assessments against the property in such county to pay the cost of operating and maintaining such hospitals as follows:

(1) In class 'A' counties as defined in New Mexico Statutes, 1953 Compilation, section 15-43-1, such levy shall not exceed three and one-fourth (3-1/4) mills on each dollar of assessed value of property subject to taxation.

(2) In other such counties such levy shall not exceed three-fourths (3/4) of one mill on each dollar of assessed value of property subject to taxation.

(3) The levies above provided for shall be made at the direction of the boards of county commissioners but only to the extent that the board deems necessary to operate and maintain such hospitals and to pay the amounts required in performance of any contracts made pursuant to this act.

(b) The boards of county commissioners in counties wherein no county hospital or municipally-owned hospital serving as a county hospital is located are authorized:

(1) To enter into contracts with another county having a county hospital or municipally-owned hospital serving as a county hospital for hospitalization of patients who are residents of such county having no such hospital, with the approval of the board of trustees of such hospital of such contracts; and

(2) To levy and collect annually assessments in accordance with the foregoing section 15-48-12

(a) as amended by this act in order to pay the amounts required in the performance of such contracts."

You will observe that nowhere is mention made of county owned hospitals leased to private concerns. County hospitals, or where there are none, municipal hospitals serving in lieu of county hospitals, are the only two categories mentioned.

Those hospitals leased to private concerns might have been mentioned, but were not. While the "express mention" rule is only an aid to construction, **Wilson v. Rowan Drilling Company**, 55 N.M. 81, 227 P. 2d 365, we believe such construction is sound here, especially in view of the fact that otherwise we would have taxation in aid of a private concern. We should be slow to ascribe such intention to the Legislature.

Finally, the very hospital in question was involved in the recent case of **Akopianz v. The Board of County Commissioners of Otero County**, being No. 6419 on our Supreme Court's docket. It was held that the hospital was a private, not a public hospital, by virtue of the lease provisions, and that this was so notwithstanding ownership by Otero County. We think Sections 15-48-12 and 13 (p.s.) have reference to public hospitals of the two categories therein named.

The taxes in question may not legally be levied under present conditions.