

Opinion No. 58-243

December 30, 1958

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

TO: Honorable E. M. Barber, District Attorney, Seventh Judicial District, Truth or Consequences, N.M.

QUESTION

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Is Carrie Tingley Hospital required by law to pay a 5% administrative charge?

CONCLUSION

No.

OPINION

ANALYSIS

The relevant statutory provision, being Laws 1957, Chapter 235, Section 6 C, reading:

"There shall be included in each budget of **departments, commissions, board, and agencies**, exclusive of the state highway department, department of game and fish and the state land office, an item for 'general administrative overhead' expense equal to five percent of the total budget; provided that any department which makes or has made other arrangements for paying administrative overhead costs shall be excepted from this provision, if approved by the department of finance and administration. Provided further that the budgets for general administrative overhead expense shall be paid each year into the state general fund." (Emphasis supplied).

leaves some doubt upon the issue. We realize that such institutions as Carrie Tingley Hospital have governing boards, and in that sense, a "board" is involved. On the other hand, it would have been simple for the Legislature to have provided that "institutions" or "state institutions" were subject to the 5% charge as well as ". . . departments, commissions, board, and agencies. . ." We think the omission is material.

In addition, we are informed by the Director of the Department of Finance and Administration that in the past as an administrative matter, the 5% charge has not been imposed on the hospital and comparable institutions. The weight of such administrative construction is well recognized. **State ex rel. State Highway Commission v. Walker**, 61 N.M. 374, 301 P. 2d 317.

In our opinion, Carrie Tingley Hospital is not required to pay the 5% administrative charge.