

Opinion No. 60-241

December 28, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Charles C. Staab Director, Social Security Division Public Employees Retirement Association 403 Don Gaspar Santa Fe, New Mexico

QUESTION

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Are the Department of Public Health and the Department of Public Welfare separate "juristic entities" so that they would be considered political subdivisions of the state, rather than instrumentalities of the state, for purposes of coverage under the federal-state social security agreement?

CONCLUSION

No.

OPINION

{*666} ANALYSIS

At the outset, we must try to define the meaning of the term "juristic entity", and the sense in which it is used in this opinion. **Black's Law Dictionary**, (4th ed. 1951), defines "juristic" as:

"Pertaining or belonging to, or characteristic of, jurisprudence, or a jurist, or the legal profession."

and defines "juristic act" as:

"One designed to have a legal effect, and capable thereof."

Under these definitions, we do not think that the use of the term "juristic entity" was intended to be a term of act; it appears that the question is whether the law would recognize the departments in question as autonomous legal bodies that have some existence apart from the state, and are therefore political subdivisions rather than instrumentalities of the state. We understand that instrumentalities of the state are included within the federal-state social security agreement, but that political subdivisions must negotiate and conclude their own agreements. It is on this basis that we proceed.

The Department of Public Health and the Department of Public Welfare are creations of the state legislature. See § 12-1-2 and § 13-1-2, N.M.S.A., 1953 Compilation. The powers of the Department of Public Health are set forth in § 12-1-3, N.M.S.A., 1953 Compilation, from which we quote relevant portions:

"The state department of public health shall be a public corporation, under the name of "New Mexico Department of Public Health," and {*667} under its corporate name, **an agency of the state of New Mexico, and shall at all times be and remain under the exclusive control of the state . . .**"

The state department shall have power:

"(1) To sue, and with the consent of the legislature of the state, be sued. . .

(4) To make contracts to carry out the purposes herein expressed. . .

(6) To purchase, lease and hold such real and personal property as is necessary for the carrying out of its powers and duties and dispose of such property. . .

(10) To serve as the agent of the state of New Mexico in all matters of public health wherein the United States is a party. . .

(11) To bring action in court for the enforcement of health laws and the rules, regulations and orders promulgated by the state board of public health . . ."

The powers of the Department of Public Welfare are set forth in § 13-1-3, N.M.S.A., 1953 Compilation, from which we quote relevant portions:

"The state department of public welfare shall be a public corporation, under the name of "The New Mexico Department of Public Welfare," and under its corporate name, **an agency of the State of New Mexico; and shall at all times be and remain under the exclusive control of this state . . .**"

"Subject to the Constitution of this state, the department shall have the power:

(a) To sue, and, with the consent of the legislature of this state, be sued. . .

(d) To make contracts, as herein authorized, to carry out the purposes herein expressed. . .

(f) To purchase, lease, and hold such real and personal property as is necessary or convenient for the carrying out of its powers and duties, and to exercise the right of eminent domain to acquire such real property in the same manner as the state now exercises said right, and to dispose of any property acquired in any manner."

When we see that both departments have the power to sue and be sued, both may contract, and both may acquire and dispose of real property, it is clear that both are legal entities, that is, entities having an existence in the contemplation of law, much like private corporations. But we cannot say that they are **separate** legal entities. Both departments are expressly created agencies of the State of New Mexico, and both are to remain at all times under the exclusive control of the state. We are bound by the express words of the statute, and are of the opinion that the Department of Public Health and Department of Public Welfare are thus state agencies and instrumentalities of the state, and not political subdivisions. As such, these two departments are included in the over-all social security agreement concluded between the United States Secretary of Health, Education, and Welfare, and the state of New Mexico.

By: Norman S. Thayer

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