

Opinion No. 65-125

July 9, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Ben Hall, Chairman, Board of Trustees, DeBaca General Hospital, 500 N. 10th Street, Fort Sumner, New Mexico

QUESTION

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May a county hospital grant a discount from regular rates for out-patient laboratory tests and X-rays for a neighboring for-profit proprietary nursing home?

CONCLUSION

Not unless the charge for the same services to other outpatients is the same.

OPINION

{*212} ANALYSIS

Section 15-48-8, N.M.S.A., 1953 Compilation authorizes boards of county commissioners in counties where a county hospital is operated "to establish reasonable charges for hospitals service for those who are able to pay therefor."

Article IX, Section 14, the antidonation provision of our State Constitution, does not prohibit a county from making provision for the care and maintenance of sick and indigent persons. It seems to us, however, that to charge one rate to patients of a nursing home for out-patients tests, and a higher rate for such tests to others who are out-patients might well violate "the equal protection of the laws." Article II, Section 18, New Mexico Constitution. All within a given class are to be treated alike and the classification must be based on some reasonable distinction. **Pueblo of Isleta v. Tondre**, 18 N.M. 388, 137 Pac. 86.

We see no real distinction here, Simply because an out-patient lives in the for-profit nursing home doesn't distinguish him rate wise from other out-patients who have the same tests made in the county hospital.