

Opinion No. 66-73

June 13, 1966

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

TO: Luis L. Fernandez, Chief, Local Government Division, Department of Finance and Administration, Santa Fe, New Mexico

QUESTION

FACTS

The 1965 session of the legislature enacted the Indigent Hospital Claims' Act. Section 13-2-12, et seq., N.M.S.A., 1953 Compilation (P.S.). The question of approving a special levy was submitted to the electorate in twenty-four counties. The levy was approved in five counties and rejected in nineteen counties. In eight counties funds were provided for indigent claims from within the constitutional limit so no election was necessary. A decision of the district court in Dona Ana County ruled that at least a portion of the Indigent Hospital Claims' Act is unconstitutional.

QUESTIONS

1. Should your office notify the thirteen counties making the payments without court action, i.e., the five which approved the Act and the eight which are within the constitutional mill limit, to stop paying hospital claims?
2. Should only those counties which are paying from a total levy over the constitutional twenty mill limit (five counties) be notified to stop paying hospital claims?
3. Should all counties be notified to stop paying claims to private hospitals regardless of the source of funds?
4. Should counties continue to budget moneys under the Indigent Hospital Claims' Act in those counties which did not vote against the levy?

CONCLUSIONS

1. No.
2. Those counties approving the levy (five counties) should not be notified to stop the payment of hospital claims.
3. No.

4. Yes.

OPINION

{*92} ANALYSIS

We will answer your first two questions together. First, all we have in the way of a court decision at this time is one district court decision in one county which decision, we understand, is going to be appealed to a higher court. Further, such decision is not binding on other district courts of this State. Second, we are informed that the case involved a suit for hospital claims brought by a city-county hospital against the County Indigent Hospital Claims Board pursuant to the provision in the Act (Section 13-3-21) which establishes this procedure in counties which failed to approve the indigent levy.

Since we have no court decision in any county which approved the levy, or in any county where no vote was required under the Act since the levy was within the constitutional mill levy limitation, we see no justification for discontinuing legitimate hospital claims for payment. We must presume that **at least** the provisions in the Act relating to these counties are constitutional.

The Indigent Hospital Claims' Act defines hospitals as "any general or limited hospital licensed as such by the New Mexico Department of public health, except hospitals in A class counties." Based on this provision we see no justification for discontinuing payment of claims to private hospitals if the payment is made from the county indigent hospital claims' fund.

We will now discuss why we say **so long as payment is made from the indigent hospital claims' fund**, since it bears on your fourth question.

The 1966 legislature enacted a provision {*93} relating to a levy for county hospitals. Laws 1966, Chapter 6, is now in effect. Basically, what this Act did was reinstate a former statute authorizing a levy of three-quarters of one mill to support county hospitals. The prior statute (Section 15-48-12, N.M.S.A., 1953 Compilation) provided that if the three-quarter mill levy would result in exceeding the constitutional total of twenty mills, the question was submitted to the electorate and, if voted upon favorably, the question was only submitted every four years thereafter although the levy was made annually.

The revivor statute (Laws 1966, Chapter 6, Section 3, compiled as Section 15-48-12.1) provides that such a three-quarter mill levy authorized prior to the effective date of the Indigent Hospital Claims' Act could be levied and collected during the entire period for which the levy was originally authorized without a new vote. It further provided that "no levy under the revived law shall be collected in any county during any portion of a fiscal year for which a county hospital in such county receives funds by reason of a levy made in such county under the provisions of the Indigent Hospital Claims' Act."

Since your office must hold county budget hearings, we would suggest that in order to take care of various contingencies, that levies for hospital purposes be budgeted in the alternative. By this we mean that the budget include the amount determined to be necessary under the Indigent Hospital Claims' Act with an additional provision that reads something along the following lines: "Should the Indigent Hospitals Claims' Act as it relates to this county, or as it relates to every county, be determined by the courts to be unconstitutional, the levy as provided in Laws 1966, Chapter 6 is to be made and a new vote is not required during the period of authorization of the original three-quarter mill levy made under Sections 15-48-12 and 15-48-13 prior to their repeal in 1965."