

## **Opinion No. 70-39**

April 14, 1970

**BY:** OPINION OF JAMES A. MALONEY, Attorney General

**TO:** Mr. Patricio S. Sanchez Assistant District Attorney Sixth Judicial District Post Office  
Box 1025 Silver City, New Mexico

### **QUESTIONS**

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May Hillcrest General Hospital, a county institution, give its own employees a discount on the bills for services provided by that hospital to its employees?

#### **CONCLUSION**

No.

### **OPINION**

#### **{\*69} ANALYSIS**

The giving of discounts on bills for services rendered by the hospital may be construed as one of two things. It is either a gift or donation, by the hospital to the employee, of the monetary difference between the discounted bill and what the charges would normally be, or it is a gift or donation of the services of the hospital to the extent of such discount.

It is impossible to defend the position that such discounts could be made a part of the employee's salary. The salary of the employee is a definite item in the budget of the hospital. The hospital budget, containing a specific provision for employees' salaries must be approved by the Department of Finance and Administration, Local Government Division as provided for in Section 11-2-57, N.M.S.A., 1953 Compilation. If the discount to the employee is considered a part of his salary then it would be impossible to accurately budget the total compensation to be paid to employees, since each employee's medical expenses would vary from time to time.

It is equally impossible to make the adjustment in salary at the end of the pay period. To do so at that time {\*70} would be giving each employee so receiving such discounts extra compensation after services are rendered or contract made in violation of the New Mexico Constitution, Article IV, Section 27.

If the discount cannot be considered as salary for services rendered then it must be considered as a gift or donation by the hospital to the employee in violation of the New Mexico Constitution, Article IX, Section 14, set out below:

"Neither the state, nor any county, school district, or municipality, except as otherwise provided in this Constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation, or in aid of any private enterprise for the construction of any railroad; provided, nothing herein shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons."

We therefore conclude that it is unlawful for a county hospital to give its employees a discount on bills for services provided by that hospital.

This opinion should be distinguished from the Opinion of the Attorney General No. 69-59, dated June 16, 1969, in that the discounts contemplated here are not capable of being specifically determined as are the amounts being contributed toward group insurance coverage as considered in that opinion.