

## **Opinion No. 71-47**

March 15, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Maralyn S. Budke Legislative Finance Committee Executive-Legislative Bldg. Santa Fe, New Mexico

### **QUESTIONS**

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May the Miners' Hospital at Raton, Villa Solano Hospital in Hagerman and the Fort Stanton Hospital be closed?

#### **CONCLUSION**

Yes, under conditions herein stated.

### **OPINION**

#### **{\*65} ANALYSIS**

The Miners' Hospital of New Mexico located at Raton was created by the authority of Chapter 2, Section 4 of the 1903 Laws of New Mexico. Under the provisions of Section 9 of the Act, the hospital was intended for the free treatment and care of resident miners of the Territory of New Mexico who became sick or injured in their occupation. Section 6 of the Act placed the management and control of the institution in a board of five trustees appointed by the Territorial Governor.

Chapter 48, Section 1 of the 1907 Laws of New Mexico amended the 1903 Act by adding a provision that allowed the hospital to take in other patients for treatment, upon their payment of all expenses, so long as miners were not thereby excluded from the hospital.

The Enabling Act for New Mexico of 1910, 36 Statutes at Large 557, providing for a grant of 50,000 acres for "miners' hospitals for disabled miners."

Article XIV of the Constitution of New Mexico contains the following provisions:

Section 1. Confirms the Miners' Hospital at Raton as a State Institution.

Section 2. Accepts the Enabling Act grants for the exclusive purpose and benefit for which they were made.

Section 3. Provides for control and management of the various institutions to be under the board, whose title, duties and power were conferred by law.

Section 5106 of the 1915 New Mexico Code provided for admission and maintenance of patients at the Miners' Hospital in the same language as was originally set forth in the 1903 and 1907 Laws, such now appearing as Section 13-6-1, N.M.S.A., 1953 Comp.

The Villa Solano and Fort Stanton Hospitals were established as part of the Los Lunas Hospital and Training School which in turn was created by Chapter 133, Section 1, of the 1925 Laws of New Mexico and is a "state institution" under Section XIV of the Constitution of New Mexico. The Los Lunas facility was established for the care, custody, employment, education and training of mental defectives. It is now operated under the terms of Section 34-3-1 through 14, N.M.S.A., 1953 Comp. (P.S.). The Statute provides for a governing authority to establish and maintain a hospital and training school to carry out the intent of the statute. The Villa Solano and Fort Stanton facilities are now being operated as separate entities under the Department of Hospitals and Institutions.

In 1968 the Department of Hospitals and Institutions was created by Section 13-12-1 through 7, N.M.S.A., 1953 Comp., which placed the control of state hospitals, including the Miners' Hospital, the Los Lunas Hospital and Training School, Villa Solano Hospital and the Fort Stanton Hospital under that Department's control.

Section 13-12-4 provides that:

"services and management functions {\*66} of the various institutions may be combined by the secretary in those cases in which, in the opinion of the secretary, the combination would result in economies or improved services. The facilities, their financing or any of their functions shall be operated as separate units of the state hospital facilities system, if: . . .

B. Separate units are necessary under the Constitution or laws of the state; or

C. Separate units are required under the terms of trusts, donations, devises or legislative appropriation."

Section 13-12-7 provides that:

"All property, real, person and mixed, including appropriations and cash balances now held in the name of any hospital . . . the use of which is not limited by the terms of any trust or constitutional provision, is transferred to the hospitals and institutions department."

The Department of Hospitals and Institutions authority extends only to such powers as are conferred upon it by law, but those powers not only include those expressly granted

by statute, but those fairly implied therefrom. **Brininstoll v. New Mexico State Board of Education**, 81 N.M. 319, 446 P2d 885 (Ct. App., 1970).

As to the Villa Solano and Fort Stanton Hospitals, which have no constitutional or statutory basis, Section 13-12-4, **supra**, clearly allows for combination with other facilities, so long as the care and treatment of patients is maintained as required by Section 34-3-1 **supra**. The two facilities were established by a discretionary act of the governing authority, and may be closed through the same discretion.

The obvious intent of Section 13-6-1, **supra**, is to provide free care and treatment of miners. This treatment and care ranges from immediate emergency hospitalization for injuries to extended care for long term disabilities and custodial care for aged miners. The Enabling Act referred to "miners' hospitals" in plural, not limiting in any way the number of locations. References to the Miners' Hospital of New Mexico at Raton in the Statutes is merely descriptive and does not limit the establishment of other facilities to comply with the intent of the act to provide care and treatment of miners, within the authority granted to the governing body administering the Hospital.

Specialized care typical of that required for mine injuries is available at various State Facilities such as the Roswell Rehabilitation Center, New Mexico State and Meadows Hospitals at Las Vegas and the Ft. Bayard facility for pulmonary disorders. It is the opinion of this office that the Department of Hospitals and Institutions may utilize these and other facilities for the free treatment of miners, as in its discretion is necessary. Further, development of these facilities for use by miners may be accomplished with funds derived from the Miners' Trust Funds. If any such facilities developed with miners' trust monies are utilized by other than miners, payment therefor must be made in accordance with terms of Section 13-6-1, **supra**. This may be accomplished by accounting transfers within the Department of Hospitals and Institutions. This opinion does not limit the Department of Hospitals and Institutions from purchasing medical services with Trust Funds for miners if facilities are not available at existing State institutions.

If the Department of Hospitals and Institutions determines that it is in the best interest of the miners to close or modify the operation of the Raton facility, including the transferring of equipment to other institutions for the care of miners, it is within its authority. The proposition that statutes will be construed in their most beneficial way which their language will permit to prevent absurdity, hardship, or injustice, and to favor public convenience has long been affirmed in New Mexico. **State v. Llewellyn**, 23 N.M. 43, 167, P. 414 (1917).

It is unquestioned under the terms of the Constitution and the Enabling Act that Trust Funds for Miners must be kept separate and be strictly accounted for. This includes not only the actual income from the granted lands, but also any other assets derived from the Miners' Trust. Section 10 of the Enabling Act states that "Disposition of any of said lands . . . or . . . money . . . for any object other than that for which such particular lands . . . or money . . . shall have been derived, granted or confirmed . . .

shall be deemed a breach of trust." The court held in **State ex rel. Shepard v. Mechem**, 56 N.M. 762, 250 P.2d 897 (1952) that except for administration of the various trusts, no funds could be utilized for purposes other than those stated in the Enabling Act.

Consistent with the foregoing, the Department of Hospitals and Institutions may proceed to Close Miners', Villa Solano and the Fort Stanton Hospitals.

By: Jay F. Rosenthal

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