

Opinion No. 73-30

March 22, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Honorable E.C. Serna District Attorney Sixth Judicial District P.O. Box 1025 Silver City, New Mexico 88061

QUESTIONS

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What are the duties of the District Attorney in regard to giving legal advice and representation to the Board of Trustees of the county hospital?

CONCLUSION

See analysis.

OPINION

{*51} ANALYSIS

Section 15-48-1, NMSA, 1953 Comp. gives a county power to maintain and operate a hospital, and Section 15-48-8, NMSA, 1953 Comp. makes the board of county commissioners of such county the governing body of such hospital. However, Section 15-48-10, NMSA, 1953 Comp. provides for a board of trustees of a county hospital. A board of five trustees {*52} may be appointed by the county commissioners, and this board of trustees has full power and authority to operate and manage the hospital. Section 15-48-10, **supra**, states:

"Boards of trustees for county hospitals -- Members -- Appointment -- Term -- Powers -- Bond. -- Boards of county commissioners in counties which have or shall hereafter erect county hospitals are hereby authorized to appoint a board, to be composed of five [5] members, with terms of five [5] years each, one [1] member of the original board to be appointed for a term of one [1] year, one [1] member for a term of two [2] years, one [1] member for a term of three [3] years, one [1] member for a term of four [4] years, and one [1] member for a term of five [5] years, said board to be known as the "Board of Trustees of the ___ County Hospital." The board shall select from its membership a president and a secretary. After their appointment none of the members of said board shall be removed except for cause specified in a written charge and after full and public hearing on the charge. Such board of trustees shall have full power and authority to manage and operate the hospital, to receive all funds appropriated therefor or paid from any source on account of patients accommodated in said hospital, to prescribe rules and regulations for admittance of patients to the hospital, to enter into contracts with the

federal government and departments and agencies thereof for the hospitalization of patients under the jurisdiction of the federal government, including Indian patients, and to enter into such contracts with the department of public welfare and other public and charitable agencies and institutions, to employ all personnel engaged in the operation of said hospital, and to fix their compensation and to discharge them. Notwithstanding the provisions of any other law, said board shall have the power and authority to enter into long-term contracts with the federal government, which contracts shall be binding on the successors in office of the trustees and shall be binding upon the county commissioners and their successors in office. The county commissioners shall cause to be paid over to said trustees all moneys realized through tax levy or otherwise for the operation of said hospital, and said trustees shall account annually for the receipt and expenditures of such funds. Each member of the board of trustees shall furnish a surety bond, executed by a surety company authorized to do business in the state of New Mexico, conditioned that he will faithfully perform his duties and account for and pay over all funds which shall come into his possession, said bond to be in the penal sum of five thousand dollars (\$ 5,000.00), the premium thereon to be paid out of the operating funds of said hospital."

Section 17-1-11, NMSA, 1953 Comp. sets out the duties of a District Attorney. Note particularly subsection C:

"Duties of district attorney. -- Each district attorney shall:

A. Prosecute and defend for the state in all courts of record of the counties of his district all cases, criminal and civil, in which the state or any county in his district may be a party or may be interested;

B. Represent the county before the board of county commissioners of any county in his district in all matters before the board whenever requested to do so by the board, and he may appear before the board when sitting as a board of equalization without request;

C. Advise all county and state officers whenever requested; and

D. Represent any county in his district in all civil cases in which the county may be concerned in the Supreme Court or court of appeals, but not in suits brought in the name of the state." (Emphasis supplied)

The county commissioners are county officers to whom the District Attorney owes the duty to advise. See **Pollack v. Montoya**, 55 N.M. 390, 234 P.2d 336 (1951). Therefore, he must give them advice on matters concerning the county hospital, and the Board of Trustees could surely seek legal advice concerning the hospital from the District Attorney by requesting the county commissioners to obtain such advice.

Since the Board of trustees can secure legal advice on county hospital matters {53} via the county commissioners, we think it unnecessary to determine whether the members of the Board of Trustees are themselves county officers within the meaning of Section

17-1-11 C., **supra**. It would be unreasonable to construe the two statutes to require that the Board of Trustees go through a formality of requesting that the county commissioners seek legal advice from the District Attorney. It would also be unreasonable to penalize counties whose commissioners choose to lodge county hospital authority in a Board of Trustees pursuant to Section 15-48-10, **supra**, by refusing the hospital authority direct legal advice from the District Attorney.

Enactments of the legislature are to be interpreted in accord with common sense and reason, **Westland Development Co. v. Saavedra**, 80 N.M. 615, 459 P. 2d 141 (1969), and statutes are to be construed so that their application will be neither absurd nor unreasonable. **Midwest Video v. Campbell**, 80 N.M. 116, 452 P.2d 185 (1969). Statutes should be construed so that absurdity, hardship, and injustice are avoided and the public interest and convenience are favored. **State ex rel. State Highway Commission v. Commissioners of Dona Ana County**, 72 N.M. 86, 380 P.2d 830 (1963).

Furthermore, the District Attorney is specifically required to prosecute and defend an action in which the county is a party or is interested. Section 17-1-11, **supra**. Therefore, it would appear that any action involving the county hospital would require the assistance of the District Attorney, regardless of any lack of specific legislative directive to assist the Board of Trustees of the hospital.

Therefore, we are of the opinion that the District Attorney has a duty to advise the Board of Trustees of a county hospital. He has the duty of representation in any action involving the county hospital.

By: Jane E. Pendleton

Assistant Attorney General