

Opinion No. 75-25

April 10, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Honorable Jerry Apodaca Governor State of New Mexico State Capitol Building
Santa Fe, New Mexico 87503

QUESTIONS

FACTS

Rancho de Los Angelitos in Tesuque Canyon is a private non-profit year-round twenty-four hour facility for the care of mentally retarded children. Mrs. Dixie Jones operates the home as an adjunct to her hospital in Dallas, Texas which is licensed there. Children are placed in the home either voluntarily by the parents or as wards of the State under court order.

QUESTIONS

Must the Rancho de Los Angelitos be licensed under the Public Health Act [Sections 12-34-1 to 12-34-22, NMSA, 1953 Comp.]?

CONCLUSION

Yes.

OPINION

{*83} ANALYSIS

Section 12-34-5 of the Public {*84} Health Act, **supra**, states unequivocally that "no health facility shall be operated without a license issued by the department." The statutes make no exceptions for licenses obtained in other states. The department, referred to in the act is the Health and Social Services Department. Section 12-34-2 B, **supra**. The Department is also given the authority to "maintain and enforce regulations for licensure of health facilities." Section 12-34-3 I, **supra**. Thus, it is clear that if the Rancho de Los Angelitos is a health facility within the meaning of the Act, it must be licensed by the Health and Social Services Department.

Section 12-34-2 E, **supra**, defines "health facility" by listing the kinds of institutions intended to be covered. Included in these are child care centers which are further defined in the New Mexico Department of Public Health Licensing Regulations Part 7, Child Care Facilities Providing 24 Hour Service, Effective July 1, 1964. These regulations define child care facilities also by listing the kinds of institutions intended to

be covered. Among those are institutions for mentally defective and/or retarded children which are described as follows:

An institution for mentally defective and/or retarded children is one which receives children committed by the court or surrendered on the advice of a duly licensed physician voluntarily as mentally defective or retarded, and provides such children with care, maintenance and supervision for a continuous twenty-four (24) hour period and on a year round basis.

It is clear from the facts as set out above that the Rancho de Los Angelitos is indeed such an institution for mentally retarded children and is therefore within the category of child care facilities which in turn means that it is a health facility subject to the requirement of licensing by the Health and Social Services Department.

It may be noted here that although the statutes have been changed since the 1964 regulations were promulgated, the 1964 regulations have neither been revised nor repealed. Specifically, the Public Health Act which was enacted by the Laws of 1973, Chapter 359, provided in Section 23, that:

All regulations of the department are continued in effect following the effective date of the Public Health Act unless revised or repealed.

By: Jill Z. Cooper

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