

Opinion No. 75-39

July 23, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Graciela Olivarez State Planning Office Capitol Building Santa Fe, New Mexico
87503

QUESTIONS

FACTS

The 32nd Legislature, Special Session, of the State of New Mexico appropriated two hundred fifty thousand dollars (\$ 250,000) to the State Planning Office for the purpose of contracting for alcohol rehabilitation and recovery treatment at Twin Lakes in McKinley County. The appropriation created by Chapter 15, Laws 1975, Special Session, is to be expended during the sixty-fourth and next four succeeding fiscal years. The act prohibits the expenditure of more than fifty thousand dollars (\$ 50,000) in any one fiscal year.

QUESTIONS

1. Can the \$ 250,000 appropriation be used for construction or remodeling of facilities at Twin Lakes?
2. Does the phrase, "contracting for services" limit expenditures to those provided through professional service contracts?
3. May the appropriation be used to provide services to patients who are not New Mexico citizens?

CONCLUSIONS

- 1) No.
- 2) See Analysis.
- 3) No.

OPINION

{*113} ANALYSIS

Chapter 15, Laws 1975, Special Session, is an appropriation to the State Planning Office made for the limited purpose of providing alcoholic rehabilitation and recovery

treatment services in the Twin Lakes area of McKinley County. The language of the statute clearly limits expenditures under the appropriation to treatment and rehabilitation. There is no designation of funds to be expended for construction or renovation. Since there is no such specific designation in the statute, the construction and renovation requested cannot be accomplished {**114*} using the funds appropriated by Chapter 15, Laws 1975, Special Session. Article IV, Section 30, New Mexico Constitution. See **Layne v. Harris**, 141 W. Va. 289, 90 S.E. 2d 270 (W. Va. 1955); **Howlett v. Doglio**, 402 Ill. 311, 83 N.E. 2d 708 (Ill. 1949).

The express purpose of the appropriation is to allow the State Planning Office to enter into contracts which will provide services pertaining to alcoholic rehabilitation and recovery treatment. The contracts which the State Planning Office may enter into to provide these services need not be limited to "professional services contracts" which are normally used to procure the performance of a task requiring the skills of a professional. The statute contemplates the provision of a variety of services to persons suffering from alcohol related problems. These services include, among others, dietary treatment, counseling, patient outreach, rehabilitative programs featuring crafts and skills development, and other integrated programs deemed necessary for alcohol treatment and rehabilitation.

Interpreting the statute to include budget items other than salaries for professional services rendered is necessary under the so-called "spirit and reason of the law doctrine." This principle was adopted in New Mexico as early as 1871 in the case of **Tafoya v. Garcia**, 1 N.M. 480, 483 (1871), wherein the court stated:

"The spirit as well as the letter of the statute, must be respected; and where the whole context of a law demonstrates a particular intent in the legislature to effect a certain object, some degree of implication may be called in to aid that intent."

The statute specifies that the services provided by the treatment and rehabilitation center shall be "for New Mexico citizens." Black's Law Dictionary, Revised Fourth Edition, defines citizen under American law as:

"One who, under the constitution and laws . . . of a particular state is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights."

The concept of citizenship is usually held to include the concept of domicile. **Delaware L. & W. R. Co. v. Patrowsky**, 250 F. 554, 557 (2nd Cir., 1918).

Domicile is defined in Black's Law Dictionary, Revised Fourth Edition, as:

"That place where a man has his true, fixed, and permanent home and principal establishment and to which whenever he is absent he has the intention of returning."

To qualify for treatment at the Twin Lakes alcohol treatment and rehabilitation facility the person must have a "true, fixed and permanent home" in New Mexico, must presently intend to retain New Mexico as his home state, and must be entitled to exercise full civil rights as a citizen of the State of New Mexico.

By: Charles E. Roybal

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