

Opinion No. 80-16

April 30, 1980

OPINION OF: Jeff Bingaman, Attorney General

BY: Marcia J. Wilson, Assistant Attorney General

TO: Board of Directors, Carrie Tingley Crippled Children's Hospital

CONSTITUTION - NEW MEXICO

A proposal to move the Carrie Tingley Crippled Children's Hospital from its location at Truth or Consequences will not require a Constitutional amendment nor will the hospital lose its trust funds, but will require legislation.

FACTS

The Carrie Tingley Crippled Children's Hospital (Carrie Tingley) is a pediatric orthopedic hospital for the children of the State of New Mexico located in Truth or Consequences. Carrie Tingley is a public corporation, created by Laws 1937, Chapter 13, and codified with amendments at Section 23-2-1, **et seq.**, NMSA 1978. The "Carrie Tingley Crippled Children's Hospital at Truth or Consequences" is confirmed as a state institution at Article XIV, Section 1 of the New Mexico Constitution. The following questions arise out of a proposal to move the hospital program from Truth or Consequences.

QUESTIONS

1. May the Carrie Tingley Crippled Children's Hospital program be moved from Truth or Consequences, New Mexico without an amendment to Article XIV, Section 1 of the New Mexico Constitution?
2. If Carrie Tingley is moved, will it continue to be entitled to receive a share of the proceeds of lands granted to New Mexico under the Enabling Act of June 20, 1910?
3. May Carrie Tingley be moved without amendment of the statutes which govern its operation?

CONCLUSIONS

1. Yes.
2. Yes.
3. No.

ANALYSIS

1. Carrie Tingley may be moved without amendment of Article XIV, Section 1. In its entirety, Article XIV provides:

"Section 1

The penitentiary at Santa Fe, the miner's hospital at Raton, the New Mexico state hospital at Las Vegas, the New Mexico boys' school at Springer, the girls' welfare home at Albuquerque, the Carrie Tingley crippled childrens' hospital at Truth or Consequences and the Los Lunas mental hospital at Los Lunas are hereby confirmed as state institutions.

Section 2

All lands which have been or which may be granted to the state by congress for the purpose of said several institutions are hereby accepted for said several institutions with all other grants, donations or devices for the benefit of the same and shall be exclusively used for the purpose for which they were or may be granted, donated or devised.

{*140} Section 3

Each of said institutions shall be under such control and management as may be provided by law."

OPINION

Carrie Tingley, the Girls' Welfare Home, and the Los Lunas Mental Hospital were added to Section 1 by amendment approved by the voters on November 8, 1960.

The reference to Truth or Consequences in Section 1 is ambiguous in that it is not clear whether it is merely descriptive or whether it requires that the hospital be located there. In resolving ambiguities in constitutional provisions, courts apply the same principles as are applied to the construction of statutes. **State ex rel. Wood v. King**, N.M. Bar Bull. Vol. 19, No. 3, 32, 605 P.2d 223, January 17, 1980. Statutes are to be construed to effectuate the intent of the legislature, **State ex rel. Newsome v. Alarid**, 90 N.M. 790, 568 P.2d 1236 (1977), and to accomplish the purposes sought to be accomplished, **Burroughs v. Board of County Commissioners of Bernalillo County**, 88 N.M. 303, 540 P.2d 233 (1975).

Although each institution is identified by location, nothing in the language of Article XIV suggests an intent to require that the named institutions remain at those locations. Such an intent is clear, for example, in Article XXI, Section 6 of the New Mexico Constitution, where it is stated that "[t]he capital of this state shall . . . be at the city of Santa Fe." Courts may not enlarge the scope of constitutional provisions to include requirements

not properly stated. **Board of Education of Gallup Municipal School Dist. v. Robinson**, 57 N.M. 445, 259 P.2d 1028 (1953). A requirement of permanency should not therefore be read into Article XIV, Section 1.

Nor does the purpose of Article XIV require amending Section 1, should one of the named institutions change its location. Article XIV relates back to the Enabling Act of June 20, 1910 [36 Stat. 557] which defined the terms under which New Mexico was admitted to the union. Section 7 of the Enabling Act [36 Stat. at 562-3] made certain grants of land to the new state, including a grant of one hundred thousand acres "for state charitable, penal and reformatory institutions".

Section 10 of the Enabling Act [36 Stat. 563] transferred and confirmed to the state lands granted by the Act or previously granted to the territory to be leased or sold in conformity with the provisions of the Act. The proceeds of such dispositions were to be used to support the "several objects specified in the respective granting and confirmatory provisions". Thus, the lands granted by the Act were not to be used for the location of the various state institutions, but rather for their support.

Section 2 of the Enabling Act would require the state to adopt a constitution providing, in part, that the lands granted or confirmed to the state by the Enabling Act would be accepted under the terms and conditions specified by the Act. In Article XIV, the Constitution both confirms certain territorial institutions as state institutions and accepts the land grants to be used for their support. In this respect, it is similar to Article XII, Section 11 of the New Mexico Constitution which confirms certain institutions as state educational institutions and accepts lands granted under the Enabling Act to be used for purpose of their support.

In short, the purpose of Section 1 of Article XIV is to identify the institutions entitled to benefit *{*141}* from lands granted for certain purposes. Originally, only four institutions -- the penitentiary, the miner's hospital, the insane asylum and the reform school -- were named in Section 1. The 1960 Amendment was necessary to add Carrie Tingley Crippled Children's Hospital at Truth or Consequences, the Girls' Welfare Home at Albuquerque and the Los Lunas Mental Hospital at Los Lunas as beneficiaries of the land grants. So long as these seven institutions remain named in Section 1 as the land grant beneficiaries, no amendment is necessary should one of the institutions move to another location. The purpose of Section 1 is to **identify** land grant beneficiaries, not to permanently fix their locations.

2. If Carrie Tingley is moved from Truth or Consequences, it may still receive a share of the proceeds of lands granted to New Mexico under the Enabling Act of June 20, 1910.

Section 19-1-17 NMSA 1978, (being Laws 1917, Chapter 115) provides that money derived from certain lands granted pursuant to the Enabling Act shall be "equally distributed among the institutions as defined in Section 1 of Article XIV of the constitution." Seven institutions, including Carrie Tingley, are defined in Section 1. If Carrie Tingley should move to another location but, nevertheless, remain essentially the

institution **defined** in Section 1, it would retain its entitlement to the funds. As noted above, the reference to the location of the various institutions named in Section 1 was meant to identify the institutions, not to locate them. Funds derived from lands granted under the Enabling Act go to institutions because of the purpose they serve, not because of the places where they are located.

3. The statutes which govern Carrie Tingley indicate that it shall be located at Truth or Consequences. The main building of Carrie Tingley was built by the Work Progress Administration during 1936 on land which the State of New Mexico had acquired through donation and purchase. Carrie Tingley was established as a body corporate after the building had been erected. The statutes creating the corporation state a dual purpose:

"In order to provide proper care and treatment for the crippled children of New Mexico and to make available therefor the building erected, furnished and equipped for such purpose by the Federal Government at Hot Springs." Section 23-2-1 NMSA 1978.

In addition, at the time that the corporation was created, the legislature provided:

"The real estate situated at Hot Springs, Sierra County, New Mexico, together with the hospital buildings and other improvements erected thereon and the furniture, furnishings and equipment provided therefor, are hereby transferred to the Carrie Tingley Crippled Children's Hospital, herein created, and shall hereafter be under its management and control." Laws 1937, Chapter 13, Section 8.

Where free from ambiguity, statutes must be given effect as written, **State v. Elliott**, 89 N.M. 756, 557 P.2d 1105 (1977).

In enacting these statutes, the legislature plainly intended that Carrie Tingley be located in the buildings erected at Truth or Consequences. Thus, they are unlike Article XIV, Section 1, in which the location of Carrie Tingley is given only for the purpose of identifying the institution in particular buildings at a particular location. As *{*142}* effect must be given to the intent of the statutes, the location of Carrie Tingley cannot be changed without a change in the statutes. It would, therefore, be necessary for the legislature affirmatively to authorize any move from that location.

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