

Opinion No. 87-74

December 7, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Duncan Scott, Assistant Attorney General

TO: Joseph K. Harvey, State Senator, Post Office Box 1501, Hobbs, New Mexico 88240

QUESTIONS

May Lea County enter a contract to provide medical services with a private clinic?

CONCLUSIONS

Yes.

ANALYSIS

Lea County contemplates entering a contract with a private, for-profit group to provide a daytime, outpatient clinic in Lea County. According to the proposed contract, the private group will build, equip, and staff the clinic. The clinic will make a good-faith estimate of its monthly operating costs and depreciation. Each month the County will pay the clinic this amount. The clinic will provide care for free or at reduced rates to indigent patients, and it will charge non-indigent patients a rate to be determined by later agreement between the clinic and the County. The clinic will deduct the money it receives for non-indigent care from the monthly costs that the County pays each month. If the clinic's non-indigent revenue exceeds its monthly costs, the County will pay nothing that month. The County, however, will not share the profit. The proposed contract between the clinic and the County would be for a minimum of five (5) years.

In 1981 the legislature passed the Hospital Funding Act ("Act"), Sections 4-48B-1 through 4-48B-28 NMSA 1978. The Act seeks "to encourage and enable counties...to provide appropriate and adequate hospital facilities for the sick of the county." Section 4-48B-2(A). Further, the Act seeks "to provide flexibility in financing construction, operation and maintenance of necessary hospital facilities." Section 4-48B-2(B). Although the Act does not define "hospital facilities," the Special Hospital District Act, Sections 4-48A-1 through 4-48A-18 and 4-48A-29 NMSA 1978, includes outpatient clinics within the meaning of that term. Section 4-48A-2(D).

To carry out its broad purposes, the Act provides counties with specific grants of power, including the power "to contract...[with] a public or private corporation, organization or association for the care of sick of the county." Section 4-48B-5(H). This power to contract does not require a twenty-four hour, inpatient hospital. Instead it requires only

that the contract provide for "care of the sick," which the proposed contract clearly does. This provision empowers the county to enter the proposed agreement.

This conclusion is reinforced by Section 4-48B-5(S), which provides that counties have the power "to perform any other act or adopt any regulation necessary or expedient to carry out the provisions of the Hospital Funding Act." Entering into the agreement would carry out the Act's purpose of providing "appropriate and adequate hospital facilities for the sick of the county." Section 4-48B-2(A). The Act therefore authorizes the proposed agreement.

The proposed contract is subject to the Procurement Code ("Code"), Sections 13-1-28 through 13-1-199 NMSA 1978. See Section 13-1-30 ("Except as otherwise provided in the Procurement Code, that code shall apply to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services and construction."). The proposed contract is for professional services. See Section 13-1-76 NMSA 1978 ("Professional service' means the services of...medical arts practitioners...and persons or businesses providing similar service."). Contracts for professional services must be procured by competitive sealed proposals. See Section 13-1-111. Thus, the County may not sign the proposed contract with a clinic until it chooses a clinic pursuant to the Code.

Although the County and clinic propose a contract for a minimum of five years, the Code prohibits contracts exceeding four years. Section 13-1-150. The Hospital Funding Act also provides that counties may enter agreement in excess of one year, but the agreement must provide that the county may terminate the agreement "without cause upon one hundred eighty days' notice after the first three years of the contract." Section 4-48B-5(J). So long as the proposed contract between Lea County and the clinic contains this provision, the contract may exceed one year but may not exceed four years.

ATTORNEY GENERAL

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