

Opinion No. 44-4438

January 14, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. A. D. Williams, Assistant District Attorney, Hobbs, New Mexico

In your letter dated January 13, 1944, you ask the following question:

"May the Board of County Commissioners of Lea County, New Mexico, (for the County) legally enter into a contract with the Public Works Administration of the United States Government for the purchase of hospital equipment and supplies, the leasing of hospital buildings by the County and the operation of a hospital by the county after such purchase?"

You state that a privately owned hospital is being abandoned by the owners and operators and that this would leave the citizens of the county almost without hospital facilities; that in order to keep the hospital operating the Public Works Administration has offered to pay one-half the cost of the equipment if the county will furnish the other one-half. The county is to buy the supplies and lease the building and furnish \$ 2000.00 for operating expenses. At the end of the first year's operation if there should be a deficit the PWA will bear one-half of such deficit, but if there should be a profit the county will receive all profit. The entire equipment purchased would belong to the county. You state, further, that the project is a very worthy one and is badly needed by the county.

I assume that the county has sufficient funds available for this project within its budget which could be transferred to the necessary budget item, in order that the expenditure could be made legally. I also assume that the hospital would take care of indigent patients for whom the county would have a responsibility in certain cases, although a charge for services would be made as to persons able to pay therefor in order to help defray the original expenditure and operating expenses. Viewed in that light there seems to be no doubt but that the hospital would be a necessary and proper project for the county.

There seems to be no specific statutory authority for counties to operate county hospitals. The general powers of counties are set forth in Section 15-3401 of the 1941 Compilation, as follows:

"Second. To purchase and hold real and personal property for the use of the county.

"Fourth. To make all contracts and do all other acts in reference to the property and concerns necessary to the exercise of its corporate or administrative powers."

The Supreme Court of this State, in passing upon this section, in *Agua Pura Company v. Mayor and Board of Aldermen*, 10 N.M. 6, held that under the broad powers given to

counties by this statute the county could provide an adequate water supply for municipal and domestic purposes in an unincorporated community within the county, and that such an enterprise constituted a county purpose. By analogy, I am of the opinion that providing hospital facilities to safeguard the health of the inhabitants of the county, and possibly to take care of indigent patients would also be considered a necessary and proper county purpose. In discussing this statute the Court used the following language:

"These clauses seem to mean something more than the ordinary powers appertaining to counties. They confer express authority to do the acts in the interest of the county, and to make contracts in reference to the concerns necessary to the exercise of this authority, when not otherwise provided by law. We do not understand that the grant of powers to counties or other municipal corporations must contain a specification of each particular act to be done, but it is sufficient if the words used be sufficiently comprehensive to include the proposed acts. An express authority may be general as well as particular. It is clear that the powers of the counties, by the foregoing act, are recognized as being not only 'corporate' but 'administrative'."

For these reasons, if funds are available in a budget for that purpose, I am of the opinion that the county may enter into the contract mentioned by you and operate the hospital as a county project.

By C. C. McCULLOH,

First Asst. Atty. General