

Opinion No. 47-5028

May 21, 1947

BY: C. C. McCULLOH, Attorney General

TO: Dr. James R. Scott Director Department of Public Health Santa Fe, New Mexico.
Attention: Miss Billy Tober Supervisor of Finance

{*50} We wish to acknowledge receipt of your letter of May 16, 1947, to which you had attached a copy of a letter from the U.S. Public Health Service Regional Office in Dallas, Texas, referring to Chapter 202, Laws of 1947, known as the Hospital Survey and Construction Act.

Section 5, Chapter 202, Laws of 1947 provides for appointment by the Governor of an advisory council and then provides that:

"The Director (of the State Department of Public Health) shall follow the directions of the Hospital Advisory Council and their decisions are to be carried out by him."

Chapter 202, Laws of 1947 carried an emergency clause and became effective when signed by the Governor on March 20, 1947. (New Mexico Constitution, Section 23, Article 4)

There appears to be some question as to whether the above quoted portion of Section 5, Chapter 202, Laws of 1947, gives the advisory council authority over the Department of Public Health in administering the Act and dealing with the Federal government. However, if the Act is taken as a whole, there is no question that the Legislature intended to meet all the requirements of the Federal Act and intended that the State Department of Public Health be the **sole** and **only** agency with authority to deal with the Federal Government and to administer the Act, the advisory council to the contrary notwithstanding.

For instance:

Section 3, of the Act, provides specifically as follows:

"Administration; Division of Hospital Survey and Construction. There is hereby established in the State Department of Public Health a Division of Hospital Survey and Construction which shall be administered by a full-time salaried director under the supervision and direction of the Director of Public Health. **The State Department of Public Health through such Division, shall constitute the sole agency of the state** for the purpose of

(1) making an inventory of existing hospitals, surveying the need for construction of hospitals, and developing a program of hospital construction as provided in this Act, and

(2) developing and administering a state plan for the construction of public and other non-profit hospitals as provided in this Act.

Section 4 of the Act sets out the general powers and duties of the **Director of the State Department of Public Health**. Nothing in the Act gives the Advisory Council any such powers.

Section 5 of the Act, provides also in part as follows:

"The Governor shall appoint an Advisory Hospital Council **to advise and consult with the Department of Health** in carrying {*51} out the administration of this Act.

Section 6 of the Act makes an appropriation and provides that monies so appropriated shall be expended upon proper vouchers of the State Department of Public Health. Nowhere in the Act is the Advisory Council given such authority.

Sections 7, 9, and 10 of the Act provide that the **Director of the State Department of Public Health** shall be empowered to do the things therein mentioned; the Advisory Council to the contrary notwithstanding.

Other sections of the Act also carry the same phraseology reference to the authority of the State Department of Public Health (or the Director, acting through and for said Department), to the exclusion of the Advisory Council.

It is my opinion that the Hospital Survey and Construction Act (Chapter 202, Laws of 1947) as a whole clearly indicates that the Legislature intended and declared that the State Department of Public Health be the **sole** state agency for administering the State Act and the sole state agency for dealing with the Federal government pursuant to and in accordance with the Federal Act.

If the portion of Section 5 of the Act, above first quoted, can in any way be construed as granting to the Advisory Council any authority over the State Department of Public Health, in administering the program under the Act, or in dealing with the Federal government, pursuant to and in accordance with the Federal Act -- then said portion of Section 5 is so inconsistent with other specific sections of the Act as to make that portion of Section 5, above quoted, inoperative.

By WM. R. FEDERICI,

Asst. Atty. General