

Opinion No. 55-6101

February 14, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Jack Love, Assistant District Attorney, Fifth Judicial District, Roswell, New Mexico

In your letter dated February 10, 1955, you state that a petition has been presented to the Board of County Commissioners asking that an election be called to vote on the proposition of "constructing an osteopathic hospital and isolation ward and acquiring land therefor in Chaves County, New Mexico." Your first question is as follows:

"Is the petition presented pursuant to § 15-48-4, NMSA 1953, in proper form if its proposition qualifies the word 'hospital' by limiting it to 'osteopathic hospital'?"

You also inquire whether the notice of election should present the same proposition as the petition and whether the ballot should also be in the same language?

Certainly the notice of the election and the ballot should present the same proposition as presented by the petition and the main question is whether the purpose of constructing an osteopathic hospital should be presented to the voters for bond purposes.

In connection with county hospitals, the Board of County Commissioners can act as the governing board of such hospitals and maintain and operate the same or they may appoint a board of trustees with full power and authority to manage and operate such hospitals or, under § 15-48-5 of the 1953 Compilation, they may lease county hospitals to persons, firms, organizations or corporations upon such terms and conditions as the Board of County Commissioners may determine. The statute only authorizes bond issues for county hospitals and leaves it up to the discretion of the Board of County Commissioners to contract for the operation of the hospitals or to lease the same and under that broad power, the Board could lease a county hospital to an association of osteopathic physicians who perhaps could limit the hospital facilities to physicians being trained in osteopathic schools. However, to allow the signers of the petition to limit the power and authority of the Board of County Commissioners granted to them by statute or to vote bonds for a purpose not authorized by the statute which is for county hospitals, in our opinion, would make the petition and the bonds issued thereon invalid, if voted for the purpose contained in the petition. We, therefore, are of the opinion that an election should not be called by the Board of County Commissioners based upon the petition in its present form.

I have discussed this matter with Dr. Paul Reynolds and Dr. L. D. Barber, Osteopathic Physicians of Roswell, and their attorney, W. Peter McAtee, and they agree that the

petition is not sufficient and state that they will withdraw the same and present one for the purpose of erecting a county hospital pursuant to the statute.

By C. C. McCulloh

Assistant Attorney General