

Opinion No. 56-6404

March 7, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Dr. Stanley J. Leland, Director, Department of Public Health, State Welfare Building, Santa Fe, New Mexico

You state that the maternal and infant mortality committee of the State Medical Society has requested the Department of Public Health to be custodian of records obtained in their studies. You ask if these records would be subject to subpoena in a court hearing to be used as evidence.

Should your Department accept these files, they would not become public records in the sense that your other records are, since you would merely be providing a central location for same and they would not be records required by law for you to keep.

Concerning the subpoena of same, there is nothing that would prevent a court from subpoenaing these records if necessary. The records could be subpoenaed presently from the Medical Society by a court of competent jurisdiction and the same rule would apply should your Department have them in possession.

This opinion is restricted strictly to the proposition of the court's subpoenaing the records and not to whether or not same could be introduced into evidence, since that question would have to be decided depending upon the circumstances of the offer of proof in each case.

By: Jack A. Smith

Assistant Attorney General