

**Opinion No. 56-6461**

June 6, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Murray A. Hintz, State Director, Department of Public Welfare, P. O. Box 1391, Santa Fe, New Mexico

You have addressed an inquiry to this office concerning the following fact situation.

The Federal Government has agreed to pay 100% of the cost of care and treatment of crippling conditions in Navajo Indian children residing in the State of Arizona. It has been proposed that your Department carry on the program. You ask whether it would be legal for your Department to pay the actual per diem rate requested by any hospital furnishing treatment and care to these children, or whether you would be restricted to the \$ 18.50 maximum per day established by the Special Session of the Legislature in 1955.

Chapter 9, § 4 of the Laws of the Special Session, 1955, reads as follows:

"No part of the appropriation hereby made to the department of public welfare shall be used to pay or process the payment of any hospital care of recipients of public assistance at a rate higher than eighteen dollars and fifty cents (\$ 18.50) per day."

My understanding of the program is that your Department will be furnished with the necessary funds by the Federal Government to pay the actual costs of the care and treatment of these Indian children. This money will be in a fund separate and apart from the appropriation provided your Department by the Legislature.

Since this is true you may pay from the fund furnished by the Federal Government the actual per diem rate charged by the hospitals. The \$ 18.50 per day maximum applies only to expenditures by your Department out of your appropriation established by the Legislature.

By J. A. Smith

Assistant Attorney General