

## Opinion No. 56-6553

December 4, 1956

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

**TO:** Dr. C. G. Stillinger, Superintendent, New Mexico State Hospital, Las Vegas, New Mexico

We have your letter of July 30, 1956, in which you request an opinion from this office concerning the application of §§ 46-12-1 to 46-12-13, N.M.S.A., 1953, to your hospital. These are the sections which created the Commission on Alcoholism and provided for means of the treatment of alcoholics.

The important provisions so far as this opinion is concerned are as follows:

"46-12-7. Commitment. -- The district courts, pursuant to the provisions of the laws of the state of New Mexico, are hereby authorized to take judicial notice of the fact that a chronic alcoholic is a sick person and in the need of proper medical, institutional, advisory and rehabilitative treatment, and the court is authorized to direct that he receive appropriate treatment as provided under the terms of this act (46-12-1 to 46-12-13), and may commit to the joint custody and control of said commission and the committing judge and state institution to which committed for a period of not less than four (4) days, nor more than three (3) years, any habitual drunkard, chronic alcoholic, any dipsomaniac, or any person who has been five (5) times convicted of intoxication in any court, or who is a person who has been legally determined to have lost the power of self-control from the intemperate use of spirituous or intoxicating liquors.

"46-12-8. Probation -- Discharge. -- Any person committed to the custody of the commission under section 7 of this act (46-12-7), may, notwithstanding the terms of any order of commitment, be permitted to go at large on probation and without custody or restraint, for such time and under such conditions as a majority of the commission shall judge best. Persons placed in custody under any provision of this chapter, may be discharged by the commission, pursuant to its regulations.

"46-12-11. Commitment proceedings for mentally ill persons in custody of commission. -  
- The commission may bring commitment proceedings, in the district court, for commitment to such institution as the court may direct, of any person who has been committed to the custody and control of the commission and who is mentally ill."

Your first question is as follows:

"May the courts commit to the New Mexico State Hospital under the provisions of Section 46-12-7 for a specific length of time?"

We are of the opinion that the Legislature did not intend by this act to authorize the district courts to commit to the New Mexico State Hospital people who were nothing more than chronic alcoholics. The evident purpose of § 46-12-7 is to find the best means of caring for these unfortunate persons.

In certain cases it might be found that institutional treatment would be called for, and in such cases authorization for commitment is made. From the whole of the act, it is clear that when institutional treatment is called for, the commitment should be to the institution having facilities to best care for the particular needs of the individual involved. This would mean that the New Mexico State Hospital should only be used when the person before the Court was mentally ill and could be treated in your institution as other patients.

This conclusion is supported by the wording of § 46-12-11, above quoted. By this section, provision is made for the commitment of the mentally ill persons who are under the care and custody of the Commission. This section contemplates bringing another proceeding by the Commission to commit the mentally ill to such institution as the Court may direct. If the Legislature had intended that the New Mexico State Hospital was to be used for the commitment of any chronic alcoholic under § 46-12-7, there would hardly have been any reason to provide for a special section to cover only the mentally ill.

We, therefore, conclude that the New Mexico State Hospital should only be used for a commitment place for chronic alcoholics who are also mentally ill and subject to treatment by your hospital. In this case the commitment should be as the commitment of any other mentally ill person, and the determination of discharge should be the same as for other mentally ill persons.

Your second question is as follows:

"To what extent is the State Hospital obliged to keep these persons for the length of time specified in the commitment order?"

We believe that we have answered this question above. When commitment is made to your institution, it should not be for a period of time, because the commitment is really for a mentally ill person. Statutes governing the operation of your hospital for the discharge of your patients would control.

Your third question is as follows:

"In the event of term of commitment is not specified, can the hospital determine when the person is ready for discharge?"

We believe that what has been said above answers this question in the affirmative.

Your fourth question is as follows:

"Just what responsibility does commitment to the joint custody of the committing judge, the Alcoholic Commission, and the State Hospital entail?"

As we construe this law, we do not believe that the New Mexico State Hospital should be given any commitments under the provisions of § 46-12-7. Whenever the chronic alcoholic is found to be mentally ill and subject to commitment as such mentally ill person, he should be committed under the provisions of § 34-2-5, N.M.S.A., 1953. The control of the person committed is as by this law authorizing the commitment of the mentally ill.

Your fifth question is as follows:

"Does the State Hospital have any legal right to refuse admission or refuse to keep a person who is not found within the meaning of Article 12, Chapter 46?"

As we have heretofore pointed out, your institution is for the treatment of seriously mentally ill people of New Mexico. We do not believe that this statute, which created the Commission on Alcoholism and provided for treatment of the chronic alcoholic, in any way changes the New Mexico State Hospital. The functions and purposes of this institution are the same, namely, the treatment of the mentally ill properly committed to the hospital. The scope of service of your hospital not having been enlarged by this act (Chapter 114, Laws 1949), it must follow that the New Mexico State Hospital is authorized only to accept persons who are mentally ill and who are committed as mentally ill. If the chronic alcoholic is mentally ill, he should be sent to your hospital for treatment, not for the alcoholism but for his mental illness. Therefore, we conclude that you can refuse admission unless it is for a true mental illness commitment.

Trusting we have answered your questions, we remain

By Paul L. Billhymer

Assistant Attorney General