

Opinion No. 57-26

February 14, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Santiago E. Campos,
Assistant Attorney General

TO: Senator Tibo J. Chavez, Santa Fe, New Mexico

QUESTIONS

QUESTIONS

Would a statute providing a "pension" plan for the blind without regard to financial need be constitutional?

CONCLUSION

No. But the factor of financial need would seem to be immaterial.

OPINION

ANALYSIS

From your request I assume that the type of program you are interested in is not a strictly "pension" plan, but rather a program contemplating assistance similar to that made available under our public welfare laws.

Article 9, § 14 of the New Mexico Constitution provides:

"Neither the state, nor any county, school district, or municipality, except as otherwise provided in this Constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation, or in aid of any private enterprise for the construction of any railroad; provided, nothing herein shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons."

The prohibition of Article 9, § 14, the proviso excepted, is completed. Donations to or in aid of persons are not allowed.

However, under the proviso, care and maintenance may be provided to "sick and indigent" persons. It is our view that such care and maintenance may be extended to those who are either sick **or** indigent. It would not seem necessary that a person, in order to secure such assistance, be both sick **and** indigent. Thus, it may be that the state could constitutionally provide assistance to sick persons without reference to financial ability to pay for medical care.

Now it may be conceded that blindness may well come within the broad definition of sickness. Sickness has been defined:

"Disease; malady; any morbid condition of the body (including insanity) which, for the time being, hinders or prevents the organs from normally discharging their several functions. Any affection of the body which deprives it temporarily of the power to fulfill its usual functions." -- Black's Law Dictionary.

Further, blindness has been held to be "sickness" within the meaning of certain accident and health policies. See *Glenn v. Gate City Life Insurance Company*, 118 S.E. 2d 113. And it has also been so held in connection with specific statutes. See *Regina v. Inhabitants of Bucknell*, 28 Eng. Law and Eq. 176.

However, we do not think the cited cases or the definition control in connection with the construction of our constitutional provision. It seems to us that more than the loss of sight is necessary before such a person may be deemed "sick" within the meaning of Article 9, § 14. Otherwise, were we to accept the broad definition cited above, it would be permissible to provide assistance to, for example, persons who had lost their sense of smell, or their sense of taste; or to those who have lost, either totally or partially, their sense of hearing. We do not believe that such could be a reasonable construction of Article 9, § 14.

Thus, although we deem the ability or inability to pay as immaterial, it seems to us, nevertheless, that those who are blind and not otherwise suffering from disease may not be provided assistance by the State.