

Opinion No. 58-161

August 1, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Colonel L. W. Varner, Superintendent, Fort Stanton Tuberculosis Hospital, Fort Stanton, New Mexico

QUESTION

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The Hospital operates a kitchen, primarily to prepare food for patients. Kitchen personnel and other employees are allowed to eat meals prepared at the kitchen, and reimbursement is effected by the Hospital, either through payroll deductions or meal tickets sold to the employees at approximate food cost. Cash meals are sold to occasional guests. Under these circumstances, is the kitchen a restaurant which is required to obtain a permit from the Department of Public Health?

CONCLUSION

No.

OPINION

ANALYSIS

In defining restaurants, § 54-3-1 A., N.M.S.A., 1953 Compilation provides:

"Restaurant. The term 'restaurant' shall mean restaurant, coffee shop, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, soda fountain, bakeries, meat markets (either exclusively so or in conjunction with grocery stores) and all other eating or drinking establishments, as well as kitchens or other places in which food or drink is prepared for sale elsewhere."

In our opinion, the statute does not encompass state agencies under the circumstances set forth by you, i.e., a "restaurant", as defined in the statute, is not involved. It follows the permit required by § 54-3-2, N.M.S.A., 1953 Compilation, or the fee required by § 54-3-3, N.M.S.A., 1953 Compilation, 1957 Supplement, need not be obtained or paid by the Hospital.