

Opinion No. 64-130

October 22, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Jerry Wertheim, Assistant Attorney General

TO: Earl M. Coffee, Administrator, Miners' Hospital of New Mexico, Raton, New Mexico

QUESTION

QUESTIONS

1. Can a doctor on the staff of the Miners' Hospital be suspended or dismissed for not abiding by the rules and regulations set forth by the medical staff and the board of trustees?
2. Is the Miners' Hospital liable for the negligence of an attending doctor on its staff?
3. Can the board of trustees of the Miners Hospital prevent the Commissioner of Public Lands from selling real property allocated to that institution?

CONCLUSION

1. Yes, but see analysis.
2. See analysis.
3. No. See analysis.

OPINION

ANALYSIS

Article XIV, Section 1 of the New Mexico Constitution provides that the Miners' Hospital of New Mexico at Raton is a state institution. Section 3 of Article XIV further provides that the control and management of the Miners' Hospital is under a board whose title, duties and powers shall be provided by law.

In accordance with the above constitutional provisions our legislature enacted a statute giving the Miners' Hospital Board the power and the duty to employ all physicians and employees, and to prescribe the duties and compensation of each. Section 13-3-2, N.M.S.A., 1953 Compilation. Section 13-3-2 also gives the Miners' Hospital Board "full power to remove or discharge any officer or employee appointed or selected by them . . . when in their judgment the interest of (the) institution shall require."

Subsequently the New Mexico legislature enacted a Personnel Act. Sections 5-4-28 to 5-4-46, N.M.S.A., 1953 Compilation (P.S.). In so doing, the legislature made the Miners' Hospital subject to the act. Attorney General's Opinion 61-28, dated April 7, 1961. Section 5-4-36 (H) of the Personnel Act authorizes the personnel board to promulgate rules for the "dismissal or demotion procedure for employees in the service, including presentation of written notice stating specific reasons and time for the employees to reply thereto in writing, and appeals to the board."

A fundamental rule of statutory construction establishes that when two statutes are enacted by the legislature covering the same subject matter, they should be harmonized and construed together if possible. Accord, **State v. Rue**, 72 N.M. 212, 382 P.2d 697 (1963). Section 13-3-2, supra, which gives the Miners' Hospital Board "full power to remove or discharge" any of its employees, and Section 5-4-36 (H) of the Personnel Act, which appears to limit this authority by setting forth a procedure which must be followed when removing or demoting an employee covered by the act, can be reconciled. The Miners' Hospital Board still has power to remove or discharge any employee, but now it must exercise this power in accordance with the rules promulgated by the Personnel Board. The Miners' Hospital Board may dismiss a physician in their employment for not abiding by the rules and regulations of the Hospital Board, but the physician has the right to appeal the dismissal to the Personnel Board. The Hospital Board need not reinstate the physician even though the Personnel Board finds the grounds for dismissal inadequate. Section 5-4-40, N.M.S.A., 1953 Compilation (P.S.).

The second question is answered partially by Attorney General's Opinion No. 57-161 dated July 9, 1957. That opinion stated that the Miners' Hospital enjoyed the sovereign immunity of the state. The recent case of **Clark v. Ruidoso-Hondo Valley Hospital**, 72 N.M. 9, 380 P.2d 168 (1963), supports this position. However the enactment of Section 5-6-20, N.M.S.A., 1953 Compilation (P.S.) has affected somewhat the cloak of immunity afforded the Miners' Hospital. This statute allows a suit for negligence against the state institution. However, judgment will run against such institution only if and to the extent that the cost of the judgment is covered by liability insurance.

From the limited facts in your letter, I must assume that the land involved in the third question is that which has been granted to New Mexico for the use of the Miners' Hospital. This type of land is termed public land by Section 1 of Article XIII of the New Mexico Constitution. Section 2 of that same article gives the Commissioner of Public Lands the power to dispose of "all public lands, under the acts of Congress relating thereto and such regulations as may be provided by law." In disposition of public lands, the Commissioner of Public Lands is limited by the New Mexico Enabling Act, the Constitution, and the statutes. **Sproles v. McDonald**, 70 N.M. 168, 372 P.2d 122 (1962); **State ex rel. Del Curto v. Dist. Court of Fourth Judicial Dist.**, 51 N.M. 297, 183 P.2d 607 (1947); **Application of Dasburg**, 45 N.M. 184, 113 P.2d 569 (1941); **State ex rel. Otto v. Field**, 31 N.M. 120, 241 Pac. 1027 (1925). Except for certain transactions with the United States, nothing in the Enabling Act, in the Constitution, or in the statutes gives an institution to which public land has been allocated either the right

or power to prevent the Commissioner of Public Lands from selling the land where he is acting procedurally according to the law.