

## **Opinion No. 64-78**

June 4, 1964

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

**TO:** Alfonso G. Sanchez, District Attorney, First Judicial District, County Court House, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

What is the proper procedure for regular commitment of a person to the Los Lunas Hospital and Training School?

#### CONCLUSION

See analysis.

### **OPINION**

#### ANALYSIS

An answer to the specific question which you pose requires an analysis of the general statutory procedure for commitment to Los Lunas Hospital and Training School.

It is important to note that Section 34-3-5 (E), N.M.S.A., 1953 Compilation, (P.S.) requires an order from a court of competent jurisdiction for any admission to the Los Lunas Hospital and Training School. Furthermore Section 34-3-6 (B) N.M.S.A., 1953 Compilation (P.S.) is clear in stating that a temporary order of commitment shall issue from a district court only after a hearing on the question of whether the person is mentally defective and a finding that he is mentally defective. The statute even requires a parent or guardian who seeks to have his child or ward admitted to the Hospital and Training School to follow the same procedure.

This interpretation is made on the language "upon petition" and "if they are otherwise eligible" found in the proviso clause of Section 34-3-6 (B). In other words the voluntary commitment initiated by the parent or guardian must begin the same way -- by petition to the district court -- and end the same way -- by a finding of eligibility and an order of temporary commitment -- as an involuntary commitment.

Once a district court has issued an order of temporary commitment of a person the Superintendent of the Los Lunas Hospital and Training School is authorized by Section 34-3-6 (D) to refuse admission of such person if the "institution is not equipped to give

proper care and attention to such mentally defective person." These facts must be certified to the committing court. This is the only authority which the Superintendent has in regard to admitting or refusing to admit a mentally defective person within the provisions of Section 34-3-6, supra.

After a person has been admitted to the institution on a temporary commitment, the Hospital Evaluation Board has final authority to determine "whether or not such individual is . . . a mentally defective person and capable of being treated or cared for by such institution." Section 34-3-6.1. N.M.S.A., 1953 Compilation (P.S.). This opinion of the Hospital Evaluation Board, whether affirmative or negative, must be certified to the committing court. Then solely on these certified facts, if they assert that the person is mentally defective and capable of being treated or cared for by such institution, the committing court will issue an order for regular commitment. It must be recognized that this order is not ex parte for the foundation is the order for temporary commitment which issued only after a hearing.

The one remaining question on which you sought an opinion is the interpretation of "certify" as used in Sections 34-3-6, 34-3-6.1, 34-3-6.2, N.M.S.A., 1953 Compilation (P.S.). The generally accepted definition of "certify" is to testify to facts in writing. **State ex rel. Birdsell v. Kneeland**, 73 S. D. 73, 39 N.W. 2d 281 (1949). **Higby v. Hooper**, 124 Mont. 331, 221 P.2d 1043 (1950). Therefore one who certifies certain facts should attest to such facts by way of a notarized signature. This method conforms best with the definition "to testify to facts in writing."