

Opinion No. 65-76

May 5, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General George Richard Schmitt,
Assistant Attorney General

TO: Edwin O. Wicks, M.D., P.H., Director, New Mexico State Health Department, Santa Fe, New Mexico, ATTENTION Mrs. Louise Masters, Director, Health Facilities Division

QUESTION

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Does the New Mexico Department of Public Health have the authority under New Mexico Law to administer Federal Funds in accordance with Public Law (88-164) which are to be used in the construction of facilities for the mentally retarded and for community health centers?

CONCLUSION

Yes.

OPINION

{*132} ANALYSIS

Your answer depends upon the powers conferred by the Legislature upon the State Department of Public Health as provided in Section 12-1-3 and Section 12-1-4, N.M.S.A., 1953 Compilation which are fully quoted below:

"12-1-3. **Departmental Powers.** -- The State department of public health shall be a public corporation under the name of "New Mexico Department of Public Health," and under its corporate name, an agency of the state of New Mexico, and shall at all times be and remain under the exclusive control of the state. The management and control of the said state department is hereby vested in the board herein provided for.

The state department shall have power:

- (1) To sue, and with the consent of the legislature of this state, be sued.
- (2) To adopt and use a corporate seal.
- (3) To have succession in its corporate name.
- (4) To make contracts to carry out the purpose herein expressed.

- (5) To adopt, amend and repeal by-laws, rules and regulations.
- (6) To purchase, lease and hold such real and personal property as is necessary for the carrying out of its powers and duties and dispose of such property.
- (7) To enter into agreements with the public health agencies of other states relative to the protection of public health.
- (8) To receive and disburse such funds, commodities, equipment and supplies and any other kind of property, granted, loaned or advanced to the state of New Mexico for the protection of public health.**
- (9) To have such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon it.**
- (10) To serve as the agent of the state of New Mexico in all matters of public health wherein the United States is a party.**
- (11) To bring action in court for the enforcement of health laws and the rules, regulations and orders promulgated by the state board of public health.**
- (12) To license any public or private institutions, child care facilities, and other agencies providing assistance, care, or other services to children who are crippled, neglected, delinquent, or dependent, or to the aged, blind, feebleminded, and other dependent persons.**

The power to license vested in the New Mexico department of public health shall include the power to inspect and require reports of any institution that falls within the purview of this act, and to prescribe reasonable rules and regulations relating to licensing procedure, and for the purpose of setting and maintaining standards relating to health, safety, and Humane treatment, Provided, however, that there shall be no fee charged for such licenses." (Emphasis supplied.)

"12-1-4 Activities of Health department. --

The state department shall be responsible for the administration {**133*} of the public health activities of the state as hereinafter provided, and in that respect shall:

- (1) Supervise the health of the people of the state.
- (2) Investigate, control and abate the causes of diseases, especially epidemics, sources of mortality and effects of localities, employment and other conditions of public health.
- (3) Inspect public buildings, institutions, premises and industries and to regulate the sanitation thereof in the interest of public health.

(4) Regulate the sanitation and conduct insofar as it affects health of schools, hospitals and sanatoria, maternity homes, asylums, orphanages, hotels, restaurants, lodging-houses and tenements, factories, workshops, industrial and labor camps, recreational resorts and camps, barber shops, swimming pools and public baths, places of public amusement, and public conveyances and stations.

(5) Establish, maintain and enforce isolation and quarantine.

(6) Close theaters, schools and all other public places and forbid gatherings of people when necessary for the protection of the public health.

(7) Abate nuisances endangering the public health.

(8) Regulate plumbing, drainage, water supply sewage and water disposal, lighting, heatings, in the interest of public health.

(9) Collect, compile and tabulate the reports of marriages, births, deaths and morbidity and to require the submission of such information as may be required for such purposes.

(10) Cooperate with the health agencies of the federal government and other health agencies in carrying out measures for the protection of public health.

(11) Receive such gifts, subsidies, donations, Allotment or bequests as may be offered to the state, by the federal government or any department thereof, or by any public or private foundation or individual for the purpose of promoting public health.

(12) Regulate the disposal, transportation interment and disinterment of the dead, to such extent as may be reasonable and necessary for the protection of the public health and safety.

(13) Operate and maintain laboratory facilities for the investigation of public health matters.

(14) Disseminate information on public health matters.

(15) Aid and advise in the prevention of infant mortality and infant blindness and prescribe prophylactic treatment for the prevention of infant blindness.

(16) Promote child hygiene.

(17) Regulate the sanitation and safety for consumption of milk, meats, other foods and drugs.

(18) Regulate the practice of midwifery.

(18 1/2) To prescribe the minimum {*134} professional qualifications of public health nurses, school nurses, and sanitariums.

(19) **Establish, maintain and enforce such rules and regulations as may be necessary to carry out the intent of this act and to publish same.**" (Emphasis supplied.)

Included among the many powers granted to the State Health Department in the Statutes cited above is specific authority under Section 12-1-3(8), supra to receive and disburse such funds given to the State for the protection of public health. The Department is also expressly authorized to act as agent of the State of New Mexico in all matters of public health wherein the United States is a party, Section 12-1-3(10). Thus it is evident that the administration of federal funds to be used for the construction of facilities for the mentally retarded and community health centers in accordance with the federal law can be lawfully undertaken by the New Mexico Department of Public Health.