

Opinion No. 66-54

May 3, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Gary O'Dowd, Assistant Attorney General

TO: Mr. Alex J. Armijo, State Auditor, State Capitol, Santa Fe, New Mexico

QUESTION

QUESTION

In view of Section 13-3-16, N.M.S.A., 1953 Compilation, does the primary responsibility for support of indigents committed to the Los Lunas Hospital and Training School fall on the county or the state?

CONCLUSION

On the state.

OPINION

{*66} ANALYSIS

In 1923 the New Mexico Legislature enacted Section 13-3-6, N.M.S.A., 1953 Compilation, which provides that:

"In case any court of this state having jurisdiction of the subject-matter hereof has committed, {*67} or may hereafter commit, any child, for any reason, to a charitable institution of this state, **and no means exists for the payment of the maintenance of such child at such institution**, the court shall enter an order to require the county to pay such institution a sum of money not exceeding ten (\$ 10.00) dollars per month for each child so committed." (Emphasis added.)

Thus we see that Section 13-3-16, supra, generally deals with the commitment of children to charitable institutions of this state and provides that where there are no means for their support at such institution then the county of commitment must pay ten dollars (\$ 10.00) a month towards the support of that child.

The real question then is whether a means exists for the payment of the maintenance of indigent children who are committed to the Los Lunas Hospital and Training School.

We find two specific sections of the New Mexico statutes which directly deal with the payment of expenses and maintenance of indigents committed to the Los Lunas Hospital and Training School. The first section is Section 34-3-8, N.M.S.A., 1953

Compilation, which was re-enacted by the 1965 Legislature. It provides in part that the committing court shall inquire into the ability of the parents, guardians or custodians of a mentally defective person to contribute to the maintenance and support of such person once committed to the Los Lunas Hospital and Training School. If there is no court order entered, this section provides that the expenses and maintenance of the inmate at the institution shall be defrayed by the institution. Thus we see that the legislature has provided a means for the payment of the maintenance of one committed to the Los Lunas Hospital and Training School at the institution, and therefore Section 13-3-16, supra, is inapplicable in this situation.

We note that this conclusion is consistent with Attorney General Opinion No. 63-87 issued by this office July 22, 1963. In that opinion this office had occasion to decide whether the 1963 Legislature intended to place the cost of maintenance and support of those committed to the Los Lunas Hospital and Training School on the county or on the institution. The 1963 Legislature had amended Section 34-3-8, supra, twice. The first amendment took the burden of the costs from the county and placed it on the institution. The second amendment of the 1963 Legislature placed the burden back on the county. This office held after a lengthy analysis of the law that there was only one 1963 amendment of Section 34-3-8, supra, and that amendment placed the burden of defraying the costs of maintenance on the institution and not on the county.

We also note that our conclusion in the present opinion is consistent with a well recognized rule of statutory construction, that where a statute deals with a subject in general terms and another statute deals with the subject in specific terms the more specific statute governs. **State v. Spahr**, 64 N.M. 395, 398, 328 P. 2d 1093. The general statute here is obviously Section 13-3-16, supra, which deals with all charitable institutions; the special statute is Section 34-3-8, supra, which applies only to the Los Lunas Hospital and Training School. Section 34-3-8, supra, would be the controlling statute and therefore the costs must be defrayed by the institution and not by the county.

The second specific section which is applicable here is Section 34-3-10 (B) N.M.S.A., 1953 Compilation, which was enacted by the last session of the Legislature and will become effective on May 18, 1966. This section simply allows the board of directors of the Los Lunas Hospital and Training School to require parents, guardians or other persons having custody to make reasonable contributions towards support and maintenance of voluntarily committed patients. Since no court has jurisdiction over a voluntarily committed patient, Section 13-3-16, supra, is inapplicable to voluntarily committed patients. If the parents or guardians are unable to pay the cost of maintenance of voluntarily admitted mentally defective persons, the cost falls on the institution.

In passing we would also like to {*68} note that many mentally defective persons committed to the Los Lunas Hospital and Training School are not children and therefore Section 13-3-16, supra, is also inapplicable for this reason.

We were also asked the following question: "If the County officials fail to pay the specified amount per month, does this constitute an enforceable debt or does it merely represent an unrealized revenue to the training School?" Since we have held that the responsibility lies on the Los Lunas Hospital and Training School and not on the county, this question is moot and need not be answered at this time.