

Opinion No. 70-88

November 17, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: The Honorable Morris Stagner District Attorney Ninth Judicial District Curry County Courthouse Clovis, New Mexico 88101

QUESTIONS

FACTS

Clovis Memorial Hospital is a joint county-municipal hospital organized pursuant to Section 14-45-2, N.M.S.A., 1953 Comp. During the past several years a large volume of past-due accounts has been accumulated. "The accounts are uncollectible in every sense of the word."

QUESTION

In what manner may a joint county-municipal hospital remove uncollectible accounts from the hospital's ledger of accounts receivable?

CONCLUSION

See Analysis.

OPINION

{*151} ANALYSIS

The New Mexico Constitution, Article IV, Section 32, authorizes only two methods of extinguishing obligations owed to a public body: one, payment, and the other, a proper proceeding in court. **State v. State Inv. Council**, 30 N.M. 491, 239 P.41 (1925). This office has consistently said that a public body may remit or release debts or uncollectible accounts only by these two methods. Opinions of the Attorney General, No. 66-18, issued February 2, 1966, and No. 5662, issued February 6, 1953. This constitutional provision is undoubtedly intended to prevent public officials from releasing debts justly owed to a public body and to discourage collusion between public officials and private citizens. See Opinion of the Attorney General, No. 69-69, issued July 1, 1969.

{*152} The question presented above presumes that the debts owed to the hospital will not be paid. The overall situation suggests that no legal proceeding to collect the debts will be instituted on behalf of the hospital by its proper legal representative. While these two methods for removing accounts receivable from the hospital's ledger are the most

preferable, if the accounts are uncollectible in both senses, then the hospital may remove them from its ledgers in the following manner.

Section 14-45-2(A), **supra**, does not require a county and municipality to establish a joint county-municipal hospital but simply provides that they may do so. See Section 1-2-1 (I), N.M.S.A., 1953 Comp. The absence of an imperative legislative command to establish such a hospital indicates that the operation of the hospital is a proprietary function of the county and municipality. See Opinion of the Attorney General, No. 70-53, issued May 28, 1970. Also see **Hyde v. Lakewood**, 17 Ohio Ops.2d 61, 175 N.E.2d 323 (1961); **Kardulas v. Dover**, 99 N.H. 359, 111 A.2d 327 (1955). See generally, Annot., 25 A.L.R.2d 203 (1952). When a governmental body is authorized to exercise proprietary powers and engages in a business activity, it is well established that the governmental body has the same general power to conduct that business as would any private business. See Opinion of the Attorney General, No. 70-53, **supra**, and authorities cited therein.

Section 14-36-7, N.M.S.A., 1953 Comp., establishes a procedure by which a municipality may remove uncollectible accounts from its ledgers of accounts receivable. Such a removal procedure does not "extinguish" any obligation owed to the municipality as that concept is used in the above constitutional provision. Rather, the procedure enables a municipality to adjust its financial books so as to reflect a more favorable financial picture. Presumably, if the uncollectible accounts were later shown to be collectible in some manner, the rights of the municipality would not have been extinguished by the removal procedure and the municipality could proceed to collect from the debtor unless it were barred by the statute of limitations. See generally Opinion of the Attorney General, No. 70-25, issued March 6, 1970.

Section 14-36-7, **supra**, does not apply specifically to a joint county municipal hospital. That statutory procedure, however, does provide a reasonable administrative guideline for the management and control of the hospital. Considering that statutory procedure along with the bar posed by the statute of limitations (Opinion of the Attorney General, No. 70-25, **supra**), those accounts receivable barred by the statute of limitations could be removed from the ledger of accounts receivable of the joint county-municipal hospital, thereby satisfying the constitutional requirements set forth above.

By: James C. Compton, Jr.

Assistant Attorney General