

Opinion No. 88-41

June 29, 1988

OPINION OF: HAL STRATTON, Attorney General

BY: Lyn Hebert, Assistant Attorney General

TO: Sammy Lawrence Pacheco, District Attorney, Eighth Judicial District, P.O. Box 1414, Raton, NM 87740

QUESTIONS

May Colfax County use mill levy funds to provide indigent medical care for its non-miner residents admitted to Miners' Hospital, a state owned and operated facility?

CONCLUSIONS

No.

ANALYSIS

On November 4, 1980, the voters of Colfax County approved the following mill levy proposal ("the 1980 tax levy"):

Shall the Board of County Commissioners of Colfax County have the authority to authorize a levy of four and one-quarter (4 1/4) mills over and above the twenty (20) mill limitation, for the purpose of operating, or maintaining, or making capital improvements to, Colfax General Hospital, Springer, New Mexico, and Northern Colfax County Hospital Raton, New Mexico, for a period of time not to exceed eight (8) years?¹

Section 4-48B-12 of the Hospital Funding Act, Sections 4-48B-1 to 4-48B-28 NMSA 1978, authorized the 1980 tax levy. Section 4-48B-2 NMSA 1978 lists the purposes of the Hospital Funding Act:

A. to encourage and enable counties and other political subdivisions to provide appropriate and adequate hospital facilities for the sick of the counties;

B. to provide flexibility in financing construction, operation and maintenance of necessary hospital facilities; and

C. to minimize the cost of constructing new hospital facilities and maintaining adequate hospital facilities in all geographic areas of the state.

The voters of Colfax County approved a mill levy "for the purpose of operating, or maintaining, or making capital improvements to" hospitals.² The 1980 tax levy did not provide for indigents' medical care.

Taxes approved for a specific purpose cannot be diverted to another and different purpose. See *School Dist. No. 40 v. Board of County Comm'rs*, 155 Kan. 636, 127 P.2d 418 (1942) (money raised by tax levy to pay tuition for school district children could not be transferred to county's general fund); *Hodnett v. Monroe City School Bd.*, 270 So. 2d 598 (La. Ct. App. 1972) (tax revenues authorized by special election to provide funds to supplement teachers' salaries could not be used for employer's contribution to retirement fund); *Craig County Excise Bd. v. Texas-Empire Pipe Line Co.*, 195 Okla. 627, 159 P.2d 1003 (1945) (state excise taxes for county highway purposes could not be treated as asset of county's general fund). The Attorney General of New Mexico has opined that a hospital mill levy for operating an existing hospital could not be used to construct a new hospital. See *Att'y Gen. Op. 81-30* (1981). We find, therefore, that these tax levy proceeds cannot be used to pay indigent, non-miner residents' medical care at Miners' Hospital.

A separate statute prohibits the use of the 1980 tax levy proceeds for payment of indigents' medical care expenses. Section 27-5-2 of the Indigent Hospital Claims Act ("Act"), Sections 27-5-1 to 27-5-18 NMSA 1978, states:

The purpose of the Indigent Hospital Claims Act is to recognize that the individual county of this state is the responsible agency for ambulance transportation or the hospital care of the indigent patients domiciled in that county for at least three months or for such period of time, not in excess of three months, as determined by resolution of the board of county commissioners, and to provide a means whereby each county can discharge this responsibility through a system of financial reimbursement to ambulance providers or hospitals for actual cost incurred as the result of ambulance transportation provided for or the care and treatment of the indigent patient in the hospitals of this state, or both.

Section 27-5-7A states, "There is created in the treasury of each county a 'county indigent hospital claims fund.'" (Emphasis added.)³ Section 27-5-7B states:

Collections under the levy made pursuant to the Indigent Hospital Claims Act and all contributions shall be placed into the fund, and the amount placed therein shall be budgeted and expended only for the purpose specified in the Indigent Hospital Claims Act by warrant upon vouchers approved by a majority of the board and signed by the chairman of the board, and payments for indigent hospitalizations shall not be made from any other county fund.

(Emphasis added.)

The Act requires a tax levy proposal to be submitted to the voters at the next general or special election in a form that complies with Section 27-5-9C NMSA 1978. The levy

must be clearly labeled as a special indigent hospital levy. The 1980 tax levy does not comply with Section 27-5-9C NMSA 1978 nor was it labeled as a special indigent hospital levy. The 1980 tax levy proceeds are not proceeds in the county indigent hospital claims fund. They are proceeds from another county fund. Therefore, Section 27-5-7B NMSA 1978 prohibits Colfax County from using the 1980 tax levy proceeds for indigents' medical care expenses. The County may, however, use any proceeds in the indigent hospital claims fund to provide medical care for indigent patients at the Miners' Hospital if they otherwise qualify.⁴

ATTORNEY GENERAL

HAL STRATTON Attorney General

GENERAL FOOTNOTES

[n1](#) On December 1, 1986, Northern Colfax County Hospital was consolidated with the Miners' Hospital at Raton, a state institution. N.M. Const. art. XIV, sec. 1.

[n2](#) To "maintain" means to keep up and preserve, and to "operate" means to put into or continue in operation or activity. Perkins v. Becker, 157 S.W.2d 550, 552, 236 Mo. App. 786 (1942).

[n3](#) Section 2-5-17 NMSA 1978 exempts class A counties from the Act. Class A counties are counties "having a final, full assessed valuation of over seventy-five million dollars and having a population of one hundred thousand persons or more as determined by the last official United States census." Section 4-44-1 NMSA 1978. Colfax County is not a class A county and is, therefore, subject to the Act.

[n4](#) The Miners' Hospital is a "hospital" under Section 27-5-4D NMSA 1978.