

January 23, 2008 Interpretation of NMSA 1978, Section 27-5-6(B)

The Honorable James Taylor
New Mexico State Senator
3909 Camino Del Valle SW
Albuquerque, NM 87105

Re: Opinion Request – Interpretation of NMSA 1978, Section 27-5-6(B)

Dear Senator Taylor:

You have requested our opinion regarding the scope of a county's ability to use "planning funds" allocated under the Indigent Hospital and County Health Care Act. First, your letter asks whether it is permissible for a county to save unused funds that are allocated annually for health care planning and roll them over into "planning funds" budgets of ensuing fiscal years. Second, your letter asks whether it is permissible for a county to use planning funds to contract with a company to plan a local hospital that will serve the general population, including the indigent population, of a county. It is our understanding that in 2007, Valencia County submitted a budget to the Department of Finance and Administration ("DFA") that proposed to allocate more than ten years of unused planning funds (approximately \$275,000) in order to enter into a professional services contract with a company to plan a new local, countywide hospital. It is also our understanding that DFA rejected this fiscal request in May 2007.

Based on our examination of the relevant New Mexico statutes, opinions and case law authorities, and on the information available to us at this time, we conclude that the legislature did not authorize a county to save a portion of its annual planning funds in order to roll them over to ensuing fiscal years. We conclude that a county may use its annual allocation of planning funds to enter into a contract for professional services in order to plan a new local, countywide hospital.

There are three rules of statutory construction that are applicable to this matter. First, a statute should be read according to its plain, written meaning. See Wilson v. Denver, 125 N.M. 308, 314, 961 P.2d 153 (1998). Second, "[a] county is but a political subdivision of the State, and it possesses only such powers as are expressly granted to it by the Legislature, together with those necessarily implied to implement those express powers." El Dorado at Santa Fe, Inc. v. Bd. of County Comm'rs, 89 N.M. 313, 317, 551 P.2d 1360, 1364 (1976). Third, "[w]hen the Legislature confers an express power or imposes a duty upon a county and prescribes the method for exercising the power or discharging the duty, that method is exclusive." Id. at 317.

The purpose of the Indigent Hospital and County Health Care Act ("Act"), NMSA 1978, §§ 27-5-1 to -18 (1965, as amended through 2004) is "to recognize that the individual county of this state is the responsible agency for ambulance transportation or the hospital care or the provision of health care to indigent patients domiciled in that county for at least three months...." NMSA 1978, § 27-5-2 (A) (1997). The Act creates a

“county indigent hospital claims fund.” NMSA 1978, § 27-5-7 (1999). The fund, including all collections under the levy authorized by the Act and payments placed in the fund, “shall be budgeted and expended only for the purposes specified in the Indigent Hospital and County Health Care Act.” NMSA 1978, § 27-5-7(B) (1999). Cf. N.M. Att’y Gen. Op. 07-05 (2007) (Los Alamos County lacked the express authority under the Act to purchase individual health insurance policies for indigent patients and thus could not take this action).

The Act authorizes a county to adopt an annual budget covering what is “needed to defray claims made upon the fund and to pay costs of administration ... and costs of development of a countywide or multi-county health plan.” NMSA 1978, § 27-5-6(B) (2003). The legislature chose to place a check and balance on how much money may be allocated and spent annually on planning matters. According to NMSA 1978, Section 27-5-6(B)(1)-(3):

The combined costs of administration and planning shall not exceed the following percentages of revenues based on the previous fiscal year revenues for a fund that has existed for at least one fiscal year....

...

The percentage of revenue in the fund that may be used for such combined administrative and planning costs is equal to the sum of the following:

- (1) ten percent of the amount of the revenues in the fund not over five hundred thousand dollars (\$500,000);
- (2) eight percent of the amount of the revenues in the fund over five hundred thousand dollars (\$500,000) but not over one million (\$1,000,000); and
- (3) four and one-half percent of the amount of the revenues in the fund over one million dollars (\$1,000,000).

According to your letter, Valencia County, on several occasions, has not expended its full annual allocation of administration and planning funds. It has tracked how much funding it has not used on an annual basis (since 1993) and has calculated that it has “saved” approximately \$275,000. It is our understanding that the County now wants to take this amount of money out of the Indigent Fund and use it to pay for professional services provided by a contractor that will help plan a new local, countywide hospital.

In April 2007, DFA informed the County that it disagreed with the County’s position on the calculation and wrote: “The plain meaning of Section 27-5-6 NMSA is that administration and planning monies are calculated on a percentage of the previous fiscal year revenues and are limited to only those calculations.” Letter from Ms. Judie Amer, DFA General Counsel, to Ms. Cynthia Wimberly, Valencia County Counsel (Apr. 26, 2007). The letter added: “[T]he Legislature knows how to create an accumulating,

non-reverting special fund or a subaccount when it chooses. However, in this case, the Legislature expressly did not ...[and there is nothing about how] planning funds from one fiscal year ... [can be kept] segregated in subaccount of the Fund for expenditure in some subsequent fiscal year.” Id. DFA concluded that the County, based on the above-statutory formula, should have approximately \$108,000 available for 2007 for planning purposes and thus available to contract for professional services.

We agree with DFA’s position on both propositions. First, a county must have express statutory authority to take an action. The plain language of the statute does not provide express authority to save revenue allocated but not used for planning costs and roll it over into ensuing fiscal years. Thus, unused planning funds flow back into the overall Indigent Fund at the end of the year. Second, the legislature is capable of writing a statute regarding the roll over of funds. Cf. NMSA 1978, § 27-5-7(B)(1999) (“Any balance remaining in the [overall] fund at the end of the fiscal year shall carry over into the ensuing year....”) It did not do so for planning funds.

The annual allocation of planning funds may be used to plan for a new local, countywide hospital. One of the purposes of the Act is to help counties, as the “responsible agency”, provide for hospital care for indigent New Mexicans. See NMSA 1978, § 27-5-2(A) (1997). The legislature authorized counties to spend money on improving “the provision of health care to indigent patients by providing ... revenues for countywide ... planning.” NMSA 1978, § 27-5-2(C)(1997). The Act’s definition for planning reads: “The development of a countywide or multicounty health plan to improve and fund health services in the county based on the county’s needs assessment and inventory of existing services and resources” NMSA 1978, § 27-5-4(P)(2004). Therefore, the plain language of the statute is that a county may use its planning funds for developing a plan to improve/provide health care and hospital care. This mission is served by planning to build a local hospital that will serve the indigent and general population of a county.

You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Although we are providing you with our legal advice in the form of a letter instead of an Attorney General’s Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Sincerely,

ZACHARY SHANDLER
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General
Jefferson Reynolds, Esq. (Counsel for Covenant Health System)