

Opinion No. 42-4120

July 18, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Miss Edna Murray, Superintendent Tucumcari General Hospital Tucumcari, New Mexico

{*220} Your letter of July 14 has been referred to me for attention and reply.

In checking the records in the office, I find a letter from you under date of June 22 on the same matter namely, the powers of the hospital board of the Tucumcari General Hospital. Objections seem to be based on the ground that the city council is delegating its authority to the said board:

Section 1 of Chapter 6, Laws of 1935, provides:

"All cities, towns and villages incorporated, organized and operating under special acts of the legislature shall have power to own, maintain and operate hospitals, sanitariums and other institutions for the caring and maintenance of sick or indigent persons."

Section 6 of Chapter 6, Laws of 1935, provides:

"The governing bodies of such cities, towns, or villages may by ordinance or resolution duly passed and approved as required by law, delegate the operation and maintenance of all such hospitals, sanitariums or other institutions to such other persons, corporations or associations as such governing body may select upon such terms and conditions as such governing bodies may determine."

The general rule with respect to delegation of authority by a municipal council is stated in 43 C.J., Section 240, page 242, as follows:

"The general rule against delegation does not forbid the delegation of ministerial, executive or administrative functions to subordinate officials."

In 16 C.J.S., Section 140, page 399, it is stated:

"Municipal legislative bodies, {*221} * * * in the exercise of functions committed to them by the legislature, may, by ordinance, impose on the appropriate municipal officer executive or ministerial duties."

By the ordinance, the council has stated what it wants done and all that the board is authorized to do is execute under and in pursuance of the ordinance. Furthermore, in Section 4 of the ordinance you will find express language to the effect that the hospital board shall act in an executive capacity.

In view of the foregoing I am of the opinion that there has been no unconstitutional delegation of authority by the Tucumcari City Council to the board in charge of the Tucumcari General Hospital and that the hospital board is authorized to execute the powers granted it by the ordinance.

By WILLIAM R. FEDERICI,

Asst. Atty. General