

Originated by: Ross Anderson
Concurred: Jos. S. Jenckes
Clark Kennedy

LAW LIBRARY

ARIZONA ATTORNEY GENERAL

July 2, 1962
Letter Opinion No. 62-72-L
R-296

REQUESTED BY: Arizona State Department of
Health, Lloyd M. Farner, M.D.,
and Maricopa County Attorney,
Charles Ronan.

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTIONS: (1) Is it mandatory that the
methods and techniques of admin-
istering the test to determine
the use of narcotic drug be set
forth by the State Board of
Health as provided in Section 36-
1062.01, paragraph B, before such
tests can be performed by the
county health officer?

(2) Must the determination by
the State Board of Health in
Section 36-1062.02, (B) and (E)
be given before probation, parole
or suspension of sentence can be
ordered for person convicted of
narcotic drug addiction?

(3) In regard to the charges
against the county as provided in
Paragraph (D) of Section 36-1062.02,
may the county employ a physician
or provide at the county hospital
or other county institution, fac-
ilities for the treatment of
narcotic drug addiction or estab-
lish a standard fee for those
physicians appointed by the court
in compliance with paragraph A
of Section 36-1062.02?

(4) In case a physician is
appointed by the court to treat a
narcotic addict, who has the
responsibility to determine that
the method of treatment is in

Arizona State Department of
Health, Lloyd M. Farner, M.D.
and Maricopa County Attorney,
Charles Ronan

62-72-L
Page 2
July 2, 1962

accordance with that approved
by the State Board of Health
under paragraph (B) of section 36-
1062.02?

(5) In case a physician is appointed
by a city or town health officer in
compliance with paragraph (A), section
36-1062.01, would the cost of such
a physician be a charge against the
county?

CONCLUSIONS:

- (1) Yes
- (2) Yes
- (3) Yes (qualified - see body
of opinion).
- (4) State Health Department.
- (5) Yes.

QUESTION (1)

The county health officer must administer tests within
regulations set forth by the State Department of Health. The
statute provides:

"§36-1062.01 (D)
The state board of health shall issue
regulations prescribing the method of
technique in administering the tests
provided for by this section and shall
provide the form of the report to be
filed with the court."
(Emphasis supplied.)

That statute requires the regulations be written first and
that the health officer utilize them in his tests. This
provision insures state-wide uniformity in the methods
and techniques used as well as a standard of safety for
the patient.

62-72-L
R-296

Arizona State Department of
Health, Lloyd M. Farmer, M.D.
and Maricopa County Attorney,
Charles Ronan

62-72-L
Page 3
July 2, 1962

QUESTION (2)

The pertinent portions of A.R.S. §36-1062.02
provide:

"B. Probation or parole shall not be granted as provided by subsection A unless the state board of health has certified to the several superior courts and to each of the judges of such courts, and to the board of pardons and parole and to the Arizona medical association, that a method is available for the treatment of narcotic drug addiction, specifying the manner of prescribing for and administering the treatment.

"E. In lieu of the provisions of subsections A to D, of this section, the judge of the superior court may suspend sentence of any person convicted for a first offense as a user of narcotic drugs under the provisions of §36-1062, but as a condition of suspension the judge shall require the user, with his written consent, to submit to treatment for narcotic drug addiction at a state or federal institution certified by the state board of health as having facilities to treat such addiction. Where treatment is ordered at a state institution, the cost of such treatment shall be a state charge. The provisions of this subsection shall not be applicable to a person convicted of a second or subsequent felony offense under the terms of this article."

The language in paragraph (B) prohibits probation and parole until the State Board of Health has issued the necessary certificates.

The same situation presents itself in regard to suspensions under paragraph E above. A certificate by

62-72-L
R-296

Arizona State Department of
Health, Lloyd M. Farner, M.D.
and Maricopa County Attorney,
Charles Ronan

62-72-L
Page 4
July 2, 1962

the State Board of Health is necessary before the judge of a superior court can suspend a sentence for he can only do so if he can send the person to a certified state or federal institution.

QUESTION (3)

Paragraph (A) and (D) Section 36-1062.02 provides:

"A. Notwithstanding any other provision of this article, a superior court or the board of pardons and parole may grant probation or parole to persons heretofore or hereafter convicted of narcotic drug addiction. The court or board may require as a condition of the probation or parole, that the probationer or parolee submit to treatment by a physician appointed by the court or board, but a narcotic drug shall not be used in such treatment.

"D. The cost of such treatment shall be a county charge, or a state charge when the board of pardons and parole enforces this section."

The regulations to be written by the State Board of Health must "specify the manner of prescribing for and administering the treatment." It is only after the regulation is written and a method of treatment is outlined that a determination can be made whether the expense of the treatment used is one that can be levied as a county charge. The State Board of Health must specify the method of treatment and if this includes use of county facilities then they should be used and the cost shall be a charge against the county.

QUESTION (4)

The technique and method of treatment followed by the physician must be prescribed first by the State Board of Health. The regulations themselves would have to outline who has responsibility to see that the physician con-

62-72-L
R-296

Arizona State Department of
Health, Lloyd M. Farner, M.D.
and Maricopa County Attorney,
Charles Ronan

Page 5
July 2, 1962

formed to the regulation. The State Board of Health, for example, may wish to delegate this to the state or local health departments.

The courts, themselves, could not administer this program because they are judicial bodies only. The regulations must be implemented and enforced by the appropriate arm of the executive branch, that is, the proper state department or agency thereto. The court's main interest lies in the result of the treatment to determine what course is to be taken on the parole or probation. The State Board of Pardons and Paroles has the same interests as the court as stated above.

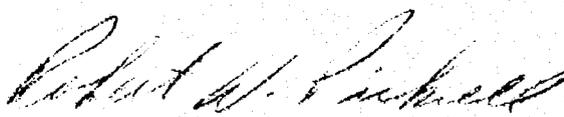
Again, the regulations as prescribed by the State Board of Health must spell out who has responsibility to see the treatment is in accord with their regulations.

QUESTION (5)

Section 36.1062.01 (C) provides:

"The cost of administering the test provided for by this section shall be a charge against the county."

The statute cited above has set up machinery to defray the cost of these tests. The statute makes it a charge against the county. No city or town could be authorized to pay these expenses in the light of the above statute.


ROBERT W. PICKRELL
The Attorney General

RA:eh
62-72-L
R-296