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June 12, 1959

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Yuma, Arizona

Attention Mr. John H. Westover

Dear Sirs:

The Attorney General has received your letter of May 29, 1959 relating to Hospital District No. 1 of Yuma, County, whereby you request an opinion upon the following questions:

"May a Hospital District include in its budget, to be submitted to the Board of Supervisors, an amount for the payment and purchase of surgical instruments, hospital equipment and supplies?"

"May a Hospital District pay for the purchase of hospital equipment, surgical instruments and supplies necessary for equipping a hospital with money raised by direct taxation?"

The questions have been carefully considered and we are constrained to answer them in the negative.

The basis for our opinion is Laws of 1949, Regular Session, Chap. 27, as embodied in Title 36, Chap. 10, Article 2, Arizona Revised Statutes, and the decision of the Supreme Court of Arizona in the case of Roberts v. Spray, (1950) 71 Ariz. 60, 223 P.2d 808. In that decision the Supreme Court said:

"(a) Query: May the board of directors of the district operate the hospital itself or must it lease it to others?"

Section 8(e)1 of the Act so clearly states what the board shall do in regard to the operation of the hospital that it is not even subject to judicial construction. Industrial Commission v. Price, 37 Ariz. 245, 292 P. 1099. In clear unambiguous language section 8(e)1 states that: 'The board of directors shall lease the hospital and its equipment for such term or period as it shall

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deem reasonable but not less than five (5) nor more than ten (10) years to a corporation not for pecuniary profit, duly organized under the laws of the state of Arizona for the purpose of conducting a hospital; provided that the rental to be received upon such lease shall be upon such terms as will provide a fair return to the district on its investment and shall be sufficient to meet the payments of principal and interest of any bonds issued under the terms of this Act, and such amounts as may be necessary to meet the expenses of the district. * * *

Nothing remains to be done but to enforce the law as written.

According to the record the bill as originally presented to the legislature provided for the establishment, maintenance and operation of one or more hospitals situated within the limits of the District. This was deleted from the bill by the legislature and the board of directors was authorized only to lease such hospital and its facilities. This fact is a proper consideration in determining the legislative intent where the meaning of the language used is obscure. The board of directors has only such powers as are expressly or by necessary implication granted to it by the provisions of the Act." (Italics supplied)

Your letter refers to Yuma Area Hospital Association, Inc., and that it was organized prior to the formation of the Hospital District. Your letter further states that this association pledged itself to lease the hospital, although the letter does not state that the lease was executed. We assume that the lease was executed as required by the applicable statutes.

We cannot find in the statutes above referred to, or the decision of the Supreme Court of Arizona cited that there is any obligation or permissible authority of the Hospital District, as lessor, to finance the Yuma Area Hospital Association, Inc., as lessee, in the operation of the hospital or in the performance of its lease. The relation of landlord and tenant must exist and there would be no point in requiring the Hospital District to lease the

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hospital facilities to the Yuma Area Hospital Association, Inc. if the former is to finance the operation of the hospital in whole or part by the latter.

If the Hospital District may finance the purchase and payment of surgical instruments, hospital equipment and supplies by revenue raised by direct taxation of the property situated in the Hospital District then, by the same token, the Hospital District could finance the entire cost of operation of the Yuma Area Hospital Association, Inc. and thereby evade the prescriptions and intent of the statutes.

Very truly yours,

WADE CHURCH
The Attorney General

LESLIE C. HARDY
Chief Assistant
Attorney General

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