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ARIZONA ATTORNEY GENERAL

July 30, 1952
Opin. No. 52-220

Arizona State Hospital
R. A. Clelland, Business Manager
2500 East Van Buren
Phoenix, Arizona

Dear Mr. Clelland:

This is in reply to your letter of July 18, 1952 wherein you present a breakdown of the estimated cost of a neurological surgery program for the current year. The estimate totals \$18,328.00, which is broken down as follows:

"Registered Nurses: 546 @ \$14.00	\$7,560.00
Neurosurgical Instrument Nurse: 36 operations @ \$14.00	504.00
Neurosurgeon (Limited to a maximum of \$6,000)	6,000.00
Anesthesiologists for Neuro- surgery	3,400.00
Consultants (Internal Medicine, etc.)	864.00"

You state that the Arizona State Hospital Board adopted a motion approving the continuation of the program on the assumption that the cost thereof would come out of the Special Operating Fund.

It is our understanding that the Special Operating Fund is the fund created by Section 8-209 ACA 1939 Supplement. We quote:

"In the event a person is received by the state hospital whose estate is chargeable with his maintenance, the court shall fix the amount to be charged, and the state hospital, through the business manager, shall collect all moneys due therefor. Moneys so collected, moneys collected for the care of voluntary patients, and, when and as collected, moneys due from the United States or any agency or instrumentality thereof for the confinement, care, or main-

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tenance of Indian wards of the government or other persons committed pursuant to federal action are appropriated to the state hospital for the insane, for the operation and maintenance fund. When collected they shall be paid to the state treasurer, through the state auditor."

You further state:

"Recent discussions with the auditor's office have indicated that the portion of this program for registered nurses and neurosurgical instrument nurses, totaling \$8,064, would be considered not as a contractual service, but rather as a personal service or salary and therefore should come out of the personal services fund."

and ask our opinion on the matter.

In an opinion dated April 13, 1950 this office declared that wages and salaries could not be paid out of the Special Operating Fund for the reason that the fund was meant to be used for operation and maintenance which excludes wages themselves. We herein reaffirm that opinion.

The immediate question for our determination is whether the amounts designated for Registered Nurses and Neurosurgical Instrument Nurses are properly considered wages and salaries and thereby necessitating their payment from the personal services fund, or whether they are professional fees, a contractual service, and thereby payable from the Special Operating Fund.

It is our understanding that the Registered Nurses and the Neurosurgical Instrument nurses are to be called in only to assist with specific operations and are not to be steadily employed at the hospital.

On the basis of this understanding, it is our opinion that the amounts due the nurses assisting with neurosurgical operations are properly payable from the Special Operating Fund as professional fees, a contractual service.

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In State of Arizona vs Frohmler, 46 Ariz. 413; 52 P. 2d 483, the terms "fees" and "salaries" are distinguished:

"Salaries are fixed compensations based on services for definite and regular periods of time and paid at regular and fixed intervals, while fees are compensation for particular services rendered at irregular and uncertain periods. (citing cases) In the one case the time element, both as to the services and the payment, is vital. In the other, it is not."

We therefore conclude that the amounts to be paid the nurses in this situation would be properly classified as professional fees and not wages or salaries and, therefore, are payable out of the Special Operating Fund.

Trusting this answers your inquiry, we remain

Sincerely yours,

FRED O. WILSON
Attorney General

ROBERT K. PARK
Assistant Attorney General

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