

found incompetent to stand trial, and persons found not guilty by reason of insanity may not be automatically segregated from other patients.

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HOSPITALS: Surcharge to non-residents by a community hospital.

A community hospital may impose a surcharge on hospital bills of non-residents but, in so doing, may not establish a surcharge for non-residents that is arbitrary, invidious and denies equal protection of the law.

Opinion No. 5105

October 5, 1976.

Honorable Casmer P. Ogonowski
State Representative
The Capitol
Lansing, Michigan 48901

You have addressed to me a letter which states:

"The Peoples Community Hospital Authority organized under Act 47 of the Public Acts of 1945, as amended, consisting of 23 communities located in western Wayne and eastern Washtenaw counties, are owners and operators of four general acute care hospitals: Annapolis Hospital in Wayne, Beyer Memorial Hospital in Ypsilanti, Outer Drive Hospital in Lincoln Park, and Seaway Hospital in Trenton.

"The Authority hospitals were built in part with the use of federal funds (Hill-Burton) and revenue bonds paid for through assessments on the participating municipalities.

"The Authority has for a number of years levied a surcharge of 20 percent for all patient admissions from patients who do not reside in one of the participating municipalities."

You then requested my opinion as to whether the Authority can add the 20 percent surcharge to the bill for hospital services provided to non-residents.

The Peoples Community Hospital Authority was established pursuant to 1945 PA 47; MCLA 331.1 *et seq*; MSA 5.2456(1) *et seq*. The title of this act indicates that the act authorizes, *inter alia*, two or more cities, townships and villages to maintain and operate one or more community hospitals and grants to the Authority certain powers of a body corporate.

1945 PA 47, *supra*, § 1 indicates the Authority may issue bonds for maintaining and operating one or more community hospitals.

1945 PA 47, *supra*, § 2 authorizes the Authority to contract with an individual, firm or corporation for the furnishing of hospital care to persons at the private expense of the individual, firm or corporation. Such authorization clearly includes the power to set rates in such a contract.

In addition, 1945 PA 47, *supra*, § 6 states:

“ . . . The board shall adopt bylaws, rules and policies governing the operation . . . of the hospital. . . . [P]atients . . . on the premises of the hospital . . . shall be subject to such bylaws, rules and policies as the hospital board may adopt. . . .”

Also, 1945 PA 47, *supra*, § 8i, which deals with rates charged for services, states:

“Free service may not be furnished by a hospital, the revenues of which are pledged for the payment of bonds, to a person, firm, or corporation, public or private, or to a public agency or instrumentality. The reasonable cost and value of a service rendered to a public agency, including a member city, township, or village, shall be paid for as the service accrues from its current funds and the charges when so paid shall be accounted for in the same manner as other revenues of the hospitals. Rates for services furnished by a hospital, the revenues of which are pledged for the payment of bonds, shall be fixed precedent to the issuance of the bonds. The rates shall be sufficient to provide for the payment of the expenses of administration, operation, and maintenance of the hospital as may be necessary to preserve the same in good repair and working order. The rates shall be sufficient to provide for the payment of principal of and interest on the bonds payable from the revenues of the hospital, as, and when, the same become due and payable, taking into account, however, amounts assessed or to be assessed against a member city, township, or village as provided in this act, and for the creation of any reserve for the payment of principal and interest as required in the resolution. The rates shall be sufficient to provide for such other expenditures and funds for the hospital as the resolution may require. The rates shall be fixed and revised from time to time by the hospital authority board so as to produce these amounts, and the hospital authority board shall covenant and agree in the resolution authorizing the issuance of the bonds, and on the face of each bond, to maintain at all times such rates for services furnished by such hospitals as shall be sufficient to provide for the foregoing. Rates charged for the services furnished by a hospital, the revenues of which are pledged for the payment of bonds under this act, shall not be subject to approval by any state, bureau, board, commission, or other like instrumentality or agency thereof.”

Although “surcharge” is not specifically mentioned in the above sections, it is my opinion that Peoples Community Hospital Authority may include such a charge in their rates under the rate setting power above indicated.

However, the Authority must comply with the constitutional requirement of equal protection under the law when setting rates. There must be some demonstrable, rational basis for surcharging non-resident patients, for distinctions drawn without such basis are arbitrary and invidious and deny equal protection of the law. *Blair v Wayne State University*, 53 Mich App 641, 643; 220 NW2d 202, 203 (1974).

Indeed “the fundamental rule of classification . . . is that it shall not be arbitrary; and it is not reviewable unless palpably arbitrary and un-

reasonable." *Baker v State Land Office Board*, 294 Mich 602, 603; 293 NW 963 (1940); *City of Lansing v Township of Lansing*, 356 Mich 641; 97 NW2d 804 (1959); See also *United States Department of Agriculture v Moreno*, 413 US 533; 93 S Ct 2821; 37 L Ed 2d 787 (1973); OAG 1973-1974, No. 4815, p 177 (September 6, 1974).

The rational basis for surcharging non-resident patients can be found in 1945 PA 47, *supra*, §§ 4 and 7. These sections authorize cities, townships and villages composing the hospital authorities to levy taxes on their property to fund the construction and operation of the Hospital Authority.

Non-resident patients are not subject to these taxes; Thus, the surcharge requires non-residents to pay an amount which more closely approximates the true cost of services. To provide service at the same rate to both residents and non-residents would constitute a subsidy for non-residents at the expense of the residents.

Cases concerning non-resident student tuition at colleges and universities have not prohibited classifying students as residents and non-residents and requiring non-residents to pay higher tuition and fees than residents. *Vlandis v Kline*, 412 US 441; 93 S Ct 2230; 37 L Ed 2d 63 (1973).¹ What was attacked in *Vlandis v Kline, supra*, was the creation of permanent and irrebuttable presumptions of non-residence when the presumption is not necessarily universally true.

It is therefore my opinion that the Peoples Community Hospital Authority may impose a surcharge on hospital bills of non-residents.

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CONSTITUTION OF MICHIGAN: Art 8, § 2.

SCHOOL FUNDS: Charge for driver education course.

A driver education course is an essential part of the program provided by public elementary and secondary schools and therefore a public school district may not charge a fee for students enrolled in the driver education course.

Opinion No. 5118

October 7, 1976.

Honorable Bill S. Huffman
State Senator
The Capitol
Lansing, Michigan 48901

You have requested my opinion on the constitutionality of Senate Bill No. 1121 which would amend 1949 PA 300, § 811; MCLA 275.811; MSA

¹ "The appellees do not challenge, nor did the District Court invalidate, the option of the State to classify students as resident and nonresident students, thereby obligating nonresident students to pay higher tuition and fees than do bonifide residents. The State's rights to make such a classification is unquestioned here." *Vlandis v Kline, supra*, p 446.