

Opinion No. 52-5510

March 5, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Marguerite K. Cantrell, Secretary New Mexico State Board of Examiners in the Basic Sciences P. O. Box 1522 Santa Fe, New Mexico

{*222} This is in reply to your inquiry concerning several points involving the Physical Therapy Act which was enacted by the Twentieth Legislature and which is Chapter 63 of the Laws of 1951.

Your first question was whether or not the requirement that physical therapists to be eligible for registration must be members of the American Physical Therapy Association or the American Registry of Physical Therapists was so discriminatory as to make the act unconstitutional.

There is a basic presumption that all statutes are constitutional. It is not properly in the province of this office to declare an act to be unconstitutional even though in my opinion it might be thought to violate constitutional principles. As it states in 16 C.J.S. at page 1012:

"In the exercise of its police power and in the interest and for the protection, of the public, a state may, without denial of the equal protection of the laws, reasonably regulate a business affected with the public interest, or a useful trade, occupation, or profession which may be injurious to the public. In the protection of the people against incompetent persons and harmful practices, the legislature may prescribe the qualifications required of persons authorized to practice a profession requiring special knowledge or skill, . . ."

"Furthermore, within proper limitations, the legislature may, {*223} without denial of equal protection of the laws, classify businesses and occupations for purposes of regulation, provide different rules for different classes, limit a regulation to a particular kind of business, extend to some persons privileges denied to others, or impose restrictions on some but not on others, where the classification or discrimination is based on real differences in the subject matter and is reasonable, and the legislation affects alike all persons pursuing the same business under the same conditions. The legislature has a large measure of discretion in making such classifications or discriminations, and the statute will not be declared void where it does not clearly appear that the enacting body has exceeded its powers."

"However, the state may not, under the guise of protecting the public arbitrarily interfere with private business, or impose unreasonable or unnecessary restrictions thereon. Any classification or discrimination must not be arbitrary or unreasonable; and the legislation must not be discriminatory in the sense of applying unequally to persons pursuing or

engaged in the same calling, profession or business under the same or like conditions and circumstances."

In the instant case since the requirement for licensing is membership in either one or two professional associations and since it is quite true that physical therapists can and are being trained in their professions who do not belong to these associations it is my opinion that there is a likelihood that the courts would find this classification to be arbitrary and unreasonable. If a physical therapist sought registration under the Act who was not a member of one of these associations it is my opinion that with the aid of the courts such a person could obtain a ruling on the validity of the statute. It seems likely that the method of classification of those eligible would be considered so discriminatory as to be a denial of the equal protection of the laws as guaranteed by the Federal and State Constitutions.

Your second question was as to what the Basic Science Board must do with the fees collected for the issuance of physical therapists' certificates since the Physical Therapy Act makes no direction as to disposition of the funds. It must be assumed that the intention of the Legislature was that the Board of Basic Science Examiners are to account for and dispose of the fees collected from physical therapists in the same fashion as provided by law for other fees collected by the board. Section 51-106 of the New Mexico Statutes Annotated directs as follows:

"The board shall pay all money received as fees into the state treasury, to be placed in a special fund to the credit of the board."

Your third question was that in the event insufficient funds are obtained from registration of physical therapists, from what source could additional money be obtained to carry out the provisions of the Act. Basically this is a problem that could be best answered by the Comptroller. It is my opinion that there are but two sources; the first would be through a budgetary transfer from the general Basic Science Board Fund to be applied to the cost of operation of this physical therapists' registration law. The second possible source would be the allowance of a special allocation from emergency funds by the State Finance Board.

Your final question was whether or not the registration called for by Section 2 of the Physical Therapy Act was intended to provide for registration which should be continuing with the payment of the \$ 10. fee upon original registration carrying through throughout the {*224} lifetime of the physical therapist or whether it was intended that this should be an annual fee with annual re-registration required.

This can only be determined by reading the statute itself. We must assume that the Legislature said what it meant and meant what it said and in the absence of any ambiguous language the clear meaning of the statute must be accepted as their intent. In Section 2 of the Act it is stated:

"Any person resident of the State of New Mexico and a member in good standing of the American Physical Therapy Association or American Registry of Physical Therapists or both shall be eligible for registration in this state and entitled, upon application made, to a certificate of registration and license to be issued by the Secretary of the Board of Basic Science Examiners of the State of New Mexico without examination with payment of a fee of \$ 10.00."

There is no statement made anywhere in the Act that this \$ 10. fee is to be an annual fee or that the registration certificate is not to be a continuing certificate. It is my opinion that the law only requires initial registration, the payment of one fee and the issuance of one certificate of registration which shall carry through thereafter. In the absence of language calling for annual re-registration it is my opinion that the State Board of Examiners in the Basic Sciences has no authority to require any such annual re-registration.

I trust that this fully answers your inquiry.