

Opinion No. 53-5759

May 26, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. F. A. Vigil Secretary New Mexico State Board of Pharmacy 342 Hillside Avenue Santa Fe, New Mexico

{*158} On May 5th, 1953 you addressed an inquiry to this office concerning the legal expenditures under the law relating to the State Board of Pharmacy of the State of New Mexico, Section 51-901 et seq., N.M.S.A., 1941 Compilation.

In Section 51-903, the duties and expenditures of the New Mexico Board of Pharmacy are set out. The statute reads as follows:

"The governor shall appoint five (5) persons, by and with the consent of the senate, all of {*159} whom shall have been residents of the state and actively engaged in the drug business for three (3) or more years, and of at least eight (8) years' practical experience as druggists or pharmacists, who shall be known and styled, the board of pharmacy for the state of New Mexico, one of whom shall hold office for five (5) years, one for four (4) years, and one for three (3) years, one for two (2) years, and one for one (1) year in the first instance; and thereafter, the governor shall annually appoint one (1) person to serve as a member of the board for five (5) years. The state pharmaceutical association of New Mexico shall annually submit to the governor a list containing the names of five (5) persons possessing the qualifications above provided, and each member of said board hereafter appointed by the governor shall be appointed by him from the names on said list. Any vacancy occurring on said board shall likewise be filled by the governor or by appointment by him from the last annual list of names so submitted, for the unexpired term. The persons so appointed shall constitute the board of pharmacy, and shall hold office for the term for which they were appointed or until their successors are duly appointed and qualified. The said board and each of them, shall within ten (10) days after their appointment or of being apprised of the same, take and subscribe the usual official oath before a properly qualified officer of the county in which they reside. The said board shall organize within thirty (30) days from and after their appointment, and annually thereafter, by the election of a president and a treasurer from its membership and a secretary, who may or may not be a member of the board. The secretary shall receive a salary to be fixed by the board and all necessary expenses in the performance of his duties. The secretary, if not a member of the board, shall have no power to inspect or to enforce this act as is granted to members of the board. He shall give receipts for all moneys received by him as such secretary and shall pay such money to the treasurer of the board, taking the treasurer's receipt for same. The treasurer shall disburse the same, subject to approval by the board, for all necessary expenses and salaries, taking proper receipts therefor. The balance of said money he shall keep in a fund to be used in carrying out and enforcing the provisions of this act. The secretary and treasurer shall each be required to execute a bond in a surety

company, in an amount to be fixed by the board, for the faithful performance of his duties, the premiums to be paid out of the treasury of the board as a necessary expense thereof. A majority of the board shall constitute a quorum for transaction of business. Each member of the board shall be entitled to receive as compensation for his services the sum of five dollars (\$ 5.00) per day while in actual session and for such time as is actually consumed in going to and returning from sessions of the board to his place of business, and also his actual expenses while attending such sessions and while enroute to and from sessions, upon presentation of itemized accounts, approved by a majority of the board, said {**160*} accounts to be paid out of the treasury for the salaries and expenses of the board.

It shall be the duty of the board of pharmacy to enforce the provisions of all laws of the state which pertain to the practice of pharmacy, the manufacture, production, sale, or distribution of drugs, chemicals or poisons, used in the compounding of prescriptions and to their standard strength and purity. The board of pharmacy shall have power to make by-laws and rules and regulations necessary for the protection of the public in the field of pharmacy, and may employ chemists, inspectors, agents, and clerical and administrative help for the proper conduct of its business."

From the above cited statute it is apparent that the expenditures permitted under the law regulating pharmacists are strictly limited. Among other expenditures the Board may spend money to pay a secretary, pay the expenses of board members at **regular** and **special** meetings and to pay for the services of chemists, inspectors, agents, and clerical and administrative help to carry out the laws relative to the regulation of the profession of pharmacy. They must also retain proper receipt for all money expended and the statute set out above requires a bond in an amount to be fixed by the board to be put up by the secretary and treasurer.

From the above, it becomes quite evident that any expenditures to an outside association or for lobby purposes before the New Mexico Legislature or any other Legislative body is an unauthorized expenditure and the treasurer approving such expenditure would be liable for same on his bond.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General