

Opinion No. 58-219

October 31, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M Rosenthal,
Assistant Attorney General

TO: Mr. Pat Hollis, Secretary, N.M. Board of Pharmacy, 217 E. Palace Avenue, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. What is our law concerning the Board of Pharmacy's right to inspect, to classify and to license a firm or business as a wholesale drug outlet?
2. If we have such a law, what are the Board's powers to so classify and to so license?
3. Does the use of the words "Drug Sundries" give the business the right to be licensed as a drug outlet?
4. Does using the words "Wholesale to Everyone" constitute a retail outlet? (It is a known fact that anyone can purchase at the business in question).

CONCLUSIONS

1. Sec. 67-9-18 authorizes the Board of Pharmacy to inspect, classify and license a business as a wholesale drug outlet.
2. It would be impossible here to denote every single power vested in the Board of Pharmacy. These various duties and powers are contained in Secs. 67-9-1 to 26 and the Drug and Cosmetics Act being Secs. 54-6-1 to 25. In addition, the general power to make rule and regulation is vested in the Board by Sec. 54-6-15 and also Sec. 67-9-2. Hence, such rule and regulation as are validly made would also have to be included herewith.
3. Sec. 67-9-13 includes the words "Drug Sundries" in its description of the word "pharmacy". No "right" exists in anyone to be licensed by the Board of Pharmacy unless the applicant complies with the aforementioned statutes and rules and regulations.
4. The phrase "Wholesale to Everyone" is not dispositive of the nature of the advertised outlet, save as an evidentiary matter. Whether the outlet is wholesale or retail depends on the manner in which it does business.

OPINION

ANALYSIS

The many pages of statutes above referred to and the rules and regulations promulgated by the Board of Pharmacy pursuant to statutory authorization constitutes the Board of Pharmacy's full authority under the law. It is further presumed, of course, that such rules and regulations are validly promulgated.

All of the above constitutes the limits of the Board of Pharmacy's powers. Reference to these statutes and regulations will determine the extent of the Board's authority.

With reference to your third question, this office is not clear as to what is meant by your use of the word "right". No individual firm or business has the "right" to be licensed by your Board unless such individual firm or business conforms to the law. Sec. 67-9-13 uses the words "Drug Sundries" to indicate the meaning of the word "pharmacy". The purpose of this section was to include such businesses as failed to use the word "pharmacy" in their title and preferred to use such words as "Apothecary, Druggist, etc.". Further, the statute specifically includes words of similar import. This office is of the opinion that if a business is, in fact, a pharmaceutical business, such comes under the jurisdiction of your Board whether the words "Drug Sundries" are used in the title, or in advertising, or not.

As to your fourth question, this office suggests that the Board of Pharmacy make factual determination based on the manner of doing business of any organization engaged in the pharmaceutical business without regard to the signs that may be found on the premises. While these signs are factually evidential as to the nature of the business, they are not dispositive. Just as a retailer of pharmaceuticals does not become a wholesaler because he calls himself one so does a wholesaler not become a retailer by self-description. The manner of doing business is determinative.