

## **Opinion No. 66-113**

October 13, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Joel M. Carson, Deputy Attorney General (Acting)

**TO:** Mr. Harold S. Bibo, State Personnel Director, Santa Fe, New Mexico

### **QUESTION**

#### **FACTS**

At the May 1966 meeting of the State Personnel Board, the board established a policy governing the confidentiality of personnel records. This policy was to the effect that the board would divulge information as to when and where persons are employed in state government, their home address, changes in pay status, and position as matters of public record. The board decided that applications, references, medical reports, and reports from former employers should be declared confidential and not open for inspection by the public.

#### **QUESTIONS**

1. Is this board policy consistent with Opinion of the Attorney General No. 64-19, dated March 4, 1964?
2. Should question No. 15 on the official personnel application blank be considered confidential?

#### **CONCLUSIONS**

1. See Analysis.
2. See Analysis.

### **OPINION**

#### **{\*153} ANALYSIS**

In Opinion of the Attorney General No. 64-19, dated March 4, 1964, you asked if the individual personnel files and records of state employees are matters of public information, and then you asked if the public could be prevented from seeing a portion of the file. The opinion reflects that your specific inquiry was related to information which you might obtain from former employers concerning the reliability, honesty, capability, and personality traits of applicants for state employment. You further stated, that this

information might not be available to the state unless a degree of confidentiality were maintained. In answer to this question we said:

Under such rule making authority it is our opinion that **the state personnel board has a limited and restricted right to classify as confidential certain portions of an individual's personnel file which would otherwise not be available to the state unless on a confidential or restricted basis.** Such right on the part of the board should be narrowly interpreted and restrictively applied. (Emphasis supplied.)

At the outset let us point out two very significant factors which distinguish your present question from the question which was asked in 1964. Your question at that time related to confidential information which was solicited from former employers concerning prospective applicants for state employment. Although we did not need to discuss this question in the opinion, there is a serious question as to whether such information is in fact a "public record." See Opinion of the Attorney General No. 64-19, dated March 4, 1964, Opinion of the Attorney General No. 61-137, dated December 27, 1961, which discusses the meaning of the term "public record."

In addition we pointed out that any right which the personnel board might have to declare information confidential was restricted to information which would not be made available to the state except on a confidential or restricted basis.

There can be no question but that an application for state employment upon an official state employment blank is a public record within the meaning of Section 71-5-1, 1953 Compilation and Opinions of the Attorney General Nos. 64-19 and 61-137, supra.

The question then remains as to whether information contained on official state personnel application forms is of such a nature that the person would not divulge the information to your department if the application form were not kept confidential. In other words would people not apply for state employment if they knew that the information contained on their job application were available for public inspection?

It is difficult to imagine why anyone who is qualified by education and experience for state employment and who is not morally unfit to accept the responsibilities of state employment would refrain from applying for employment through your department because their official application would be a matter of public record subject to public inspection. To the contrary, we believe that within the contemplation of Opinion of the Attorney General No. 64-19 and Section 71-5-1, N.M.S.A., 1953 Compilation, applications for state employment on official state personnel board application forms are and should be public records which are open for inspection to the public. We must, therefore, as to applications, answer your first question in the negative. For the reasoning stated above we must also answer your second question in the negative.

Section 71-5-1, N.M.S.A., 1953 Compilation provides:

Every citizen of this state has a right to inspect any public records of this state except records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions and except as otherwise provided by law.

{\*154} It is apparent from a reading of the above quoted statute that records of medical and mental examinations are confidential. In this respect your board policy is consistent with Opinion of the Attorney General No. 64-19 and Section 71-5-1, N.M.S.A., 1953 Compilation.