

Opinion No. 66-119

November 7, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Donald W. Miller, Assistant Attorney General

TO: Miss Maralyn Budke, Executive Secretary, Legislative Finance Committee, State Capitol, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Does the State Board of Public Welfare have the power to repeal an existing state law -- to wit: Sections 13-1-45 through 13-1-50, New Mexico Statutes Annotated, 1953 Compilation?
2. If Section 13-1-43 New Mexico Statutes Annotated, 1953 Compilation, is applicable to this problem, did the State Board of Public Welfare follow proper procedures in suspending the above cited statutes?
3. If New Mexico must set aside the relative responsibility act in order to implement Title XIX of the Federal Social Security Act, what are the proper legal procedures to accomplish this end.

CONCLUSIONS

1. See Analysis.
2. See Analysis.
3. See Analysis.

OPINION

{*160} ANALYSIS

In the Laws of 1966, Chapter 66, (the General Appropriations Act), the New Mexico Legislature stated: "It is the intent of the legislature that the appropriation to the Department of Public Welfare includes sufficient funds to implement Title XIX of the Social Security Act upon the approval of an acceptable state plan." Section 13-1-43, New Mexico Statutes Annotated, 1953 Compilation, provides:

"SUSPENSION OF OPERATION OF STATE LAW WHEN IN CONFLICT WITH FEDERAL SOCIAL SECURITY ACT -- Any section of chapter 73 [13-1-1- to 13-2-11] of

the New Mexico Statutes Annotated, 1941 Compilation as amended relating to public welfare which shall come in conflict with the provisions of the Federal Social Security Act . . . by reason of amendments of said Federal Social Security Act hereafter adopted shall, on certificate of the attorney general that such conflict exists, be suspended in its operation until amendment thereof can be given consideration by the next legislative session."

On July 21, 1966, the State Board of Public Welfare by resolution halted the enforcement of the relative responsibility act as it relates to the implementation of Title XIX. The resolution stated:

{*161} "NOW, THEREFORE, BE IT RESOLVED that in order to implement Title XIX of the Social Security Act as directed by the legislature, the New Mexico Department of Welfare will no longer enforce the provisions of Sections 13-1-45 thru 13-1-50 New Mexico Statutes Annotated (1953 Compilation), only as it pertains to the implementation of Title XIX."

This action was taken by the State Board of Public Welfare in reliance on a letter issued by the Office of the Attorney General on July 20, 1966, written by Boston E. Witt, Attorney General. That letter stated that it was the opinion of this office that under Section 13-1-46 New Mexico Statutes Annotated, 1953 Compilation the State Board of Public Welfare " **may**. . . pass such a resolution announcing its future intentions of not enforcing Section 13-1-45 so that it may implement the provisions of Title XIX of the Social Security Act." It is obvious from the letter written by Mr. Witt that this office did not rely on Section 13-1-43 as a basis whereby the Sections could be suspended. Rather, this office put its reliance on Section 13-1-46, the enforcement provision of 13-1-45. It is the opinion of this office that under the authority of the letter from this office and the statutes cited in that letter, the State Board of Public Welfare acted correctly when, by resolution, it suspended enforcement of the relative responsibility act. The Board of Public Welfare did not repeal the statute.

Assuming, then, that the Board acted correctly, your second question is whether proper procedures were followed by the Board in setting aside the statutes until the legislature could consider them. The answer to that question is yes. It is obvious from the above cited statutes that if the Welfare Board **may** enforce Section 13-1-45, but chooses not to, then it may announce that intention through a resolution passed by the Board. It is, therefore, the opinion of this office that the Board did follow proper procedures in passing the resolution and suspending the enforcement of Sections 13-1-45 through 13-1-50 New Mexico Statutes Annotated, 1953 Compilation.

Your final question inquires as to the proper legal procedures for accomplishing the setting aside of the relative responsibility act. It should be noted that the action of the State Board of Public Welfare merely suspended the enforcement of Section 13-1-46, the relative responsibility act, until consideration could be given the statute by the legislature during the next legislative session. The Board did not and could not take any action which would wipe that statute off the books or substitute another statute for it.

The correct procedure whereby this statute is to be amended or repealed lies with the legislature. It is therefore the opinion of this office that up to the date of this opinion, the correct procedure has been followed by the State Board of Public Welfare. The power to amend or repeal the act and pass another set of statutes in its place lies solely with the legislature. Therefore, any future action will have to come from that governmental body.