

## Opinion No. 74-20

May 28, 1974

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Jerry Manzagol Director New Mexico State Personnel Board 130 South Capitol Santa Fe, New Mexico 87501

### QUESTIONS

#### FACTS

(1) The Veterinary Practices Act, Section 67-11-21, NMSA, 1953 Comp., states that employees of federal, state and local governments performing official duties are exempt from the Veterinary Practices Act.

(2) The Dental Act provides that any dentist who has been lawfully licensed to practice in another state and who submits proof that he has received a written notification by the Board of Dentistry that he possesses the necessary "character" and "professional" qualifications may "enter into a contract to serve exclusively as a member "of the staff at any state hospital, institution or dental program approved by resolution of the Health and Social Services Board or maintained by the Health and Social Services Department.

#### QUESTIONS

Where the State Personnel Board has the authority to set minimum qualifications for classified employees, Section 5-4-36, NMSA, 1953, can that board require a New Mexico license for professionals in addition to what the veterinarian and dental statutes indicate as acceptable employment qualifications?

#### CONCLUSION

No.

### OPINION

#### {\*40} ANALYSIS

The New Mexico Personnel Act confers upon the Personnel Board the obligation to promulgate regulations to effectuate the Personnel Act. Section 5-4-34(A), NMSA, 1953 Comp. (1973 P.S.). Among items to be included in such rules are: (1) "a classification plan for all positions in the Service," Section 5-4-36(A), NMSA, 1953 Comp.; (2) competitive entrance and promotion tests to determine qualifications, fitness and ability of applicants to perform the duties of the positions for which they apply, Section 5-4-

36(C); and (3) exemption from competitive and promotion tests for those professional persons applying for classified positions in the service "who possess recognized registration or certification by another state agency." Section 5-4-36(D).

As stated above, Section 67-11-21, NMSA, 1953 Comp. (1973 P.S.) exempts "employees of federal, state or local governments performing official duties" from the provisions of the Veterinary Practice Act. And Section 67-4-19, NMSA, 1953 Comp. (1973 P.S.), allows "any dentist who has been lawfully licensed to practice in another state and submits proof that he has received a written notification by the Board of Dentistry that he possesses the necessary character and professional qualifications" to practice dentistry exclusively as a member of a medical staff of a state hospital, state institution or dental program approved by resolution of the Health and Social Services Board. These exemptions from licensure under the Veterinarian and Dental Acts are intended to prohibit the professional boards from requiring that persons who practice for the State of New Mexico meet all requirements of licensure. To allow the New Mexico State Personnel Board to promulgate rules requiring qualifications that a professional board cannot require would clearly be in direct violation of the legislative intent.

{\*41} While it is understandable that the Personnel Board is concerned about the establishment of a qualification less than that recognized by the established professions, the board can require qualifications, other than licensure in the State of New Mexico, that establish the professional qualifications of its professional employees.

By: Leila Andrews

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