

Opinion No. 39-3046

March 2, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. Earl Stull, Member, Fourteenth Legislature, Santa Fe, New Mexico.

{*21} You request an opinion as to House Bills No. 107 and No. 138. One of these bills amends Section 9-101, 1929 Compilation, so as to require the appointment of five persons instead of three to constitute the Board of Bar Examiners, and so as to provide that not more than one of such members shall be appointed from the same judicial district. The other is to amend Section 9-109, 1929 Compilation, so as to permit one who has failed in passing one examination to take "other examinations at any time, or times," without additional charges.

I would not say that either of these bills is unconstitutional. They do not attempt to take any power away from the court, unless the power to integrate the bar is in whole, (as it may well be), purely a judicial function. In re Integration of Nebraska State Bar Ass'n., 275 N.W. 265. Our Supreme Court has recognized that, to some extent at least, as a legislative function under the police power of the state. In re Gibson, 35 N.M. 350. See also State ex rel vs. Marron, 22 N.M. 632, where a companion section to the ones here sought to be amended was recognized.

The rule, in simple language, seems to be that the power to admit applicants to practice law, like the power to disbar or discipline, is vested solely in the courts, but the Legislature may prescribe reasonable rules and regulations for admission to the bar, so long as it does not deprive the courts of the right to make other, or additional, rules pertaining thereto. 7 C.J.S. 709, 711.

I call your attention to the fact, however, that the two sections being amended have been, in my opinion, repealed by implication. Section 6 of Chapter 100, Laws of 1925, (9-206, 1929 Compilation), gives the Bar Commission the right to set the fees and requirements to admission; and Section 7 of the same Act, (9-207, 1929 Compilation), gives the Commissioners the power to select the bar examiners, three in number.

May I suggest that both the Legislature in enacting and the Supreme Court in construing this Act (Chapter 100, Laws of 1925), recognized the superior and exclusive power of the court with respect to determining admissions to the bar and disciplining lawyers after admission. The Legislature placed full responsibility for investigating applicants for admission and causes for disbarment where the public places responsibility for maladministration of justice, on the bar itself; but gave the bar through its commission and its committee only the right to recommend admission or disbarment. The final determination rests with the Court.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.