

**Opinion No. 42-4183**

November 12, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Dr. James R. Scott, Director Department of Public Health Santa Fe, New Mexico

{\*275} This letter supplements, but is in no way inconsistent with our letter of November 7, 1942, wherein we held that you could hire a nurse, under the fact situation you presented to us, who is not a citizen of the United States. In view of the fact that, under the express language of the opinion, incorrect interpretations might possibly be given the same, the opinion is limited to the fact situation which you presented to us.

However, for your general information, we are calling to your attention Section 1, Chapter 68, Laws of 1933, which reads in part as follows:

"Hereafter all employees of the state of New Mexico, including all political subdivisions thereof and including all of the departments, bureaus, boards, commissions and institutions in said state, and all of its political subdivisions, shall be residents of the state of New Mexico, having resided in this state for a period of at least one (1) year prior to the commencement of their employment \* \* \*"

Section 11, Chapter 212, Laws of 1941, provides in part:

"The restrictions as to residence provided for in any law shall not apply to employees of state educational and other institutions, and state departments for positions in which professional training is required and for which qualified prospective employees are not available, all or part of whose salary is paid from appropriations made herein."

The same provision was in the Appropriation Acts from 1933 to 1939.

In view of the fact that our statute requires that nurses have professional training, and since you state that you cannot fill the vacancies arising under the fact situation you presented, you may hire a citizen of Canada to fill a vacancy in the position of public health nurse.

Each fact situation that is presented to you must, however, be considered a separate case, and considered in connection with the two statutes above quoted, in determining whether or not you may hire a person who has been a resident of the State of New Mexico for less than one year.

By HARRY L. BIGBEE,

Asst. Atty. General