

## Opinion No. 53-5750

May 7, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Dr. J. J. Clarke Secretary New Mexico Board of Dental Examiners Artesia, New Mexico

{\*151} We are in receipt of your letter of April 23rd, requesting an opinion as to the constitutionality of House Bill No. 78 which will be Chapter 21, passed by the 1953 New Mexico Legislature, and signed by the Governor of the State of New Mexico, which Act amends Section 51-402 of the New Mexico Statutes Annotated, 1941 Compilation.

This Act makes two major changes in the former law. First, it restricts the terms of the members of the board to two terms, and second, it sets up five districts, from each of which one commissioner should be appointed. Your question is whether or not these two restrictions violated Article 5, Section 5 of the New Mexico Constitution which reads, in part, as follows:

"The governor shall nominate, and, by and with the consent of the senate, **appoint all officers whose appointment or election is not otherwise provided for**, and may remove any officer appointed by him for in competency, neglect of duty or malfeasance in office."

You will note that the underlined portion of the Constitutional provision set out above provides that the governor shall appoint all officers whose appointment or election is not otherwise provided for. This provision can only mean that the positions and offices not set out in the Constitution, but created by the Legislature can be restricted by the Legislature to persons which the Legislature desires to act. It can not be contended, reasonably, that the Legislature does not have it within its power to restrict membership on any professional board to those persons who are members of that profession. We can see no reason why a residential restriction can not also be placed so long as the whole state is represented on any board and the restrictions on the terms is completely compatible with the elective restriction on executive officers in our Constitution.

Therefore it is the opinion of this office that House Bill No. 78 is Constitutional and does not violate Article 5, Section 5 of the New Mexico Constitution.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General