

## Opinion No. 53-5862

December 7, 1953

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

**TO:** Gerald R. Clark, M. D. State Health Director Department of Public Health Santa Fe, New Mexico

{\*285} This is in answer to your request for an opinion upon construction of Laws 1953, Ch. 67, § 1, which appears as § 71-103, N.M.S.A., 1941 Compilation, as amended, and specifically whether the Laws of 1953 give the New Mexico Department of Public Health the power to license privately owned nurseries, regardless of whether or not such nurseries give service to children who are crippled, delinquent, dependent, or feeble-minded.

The 1953 Legislature amended Section 71-103, N.M.S.A., 1941 Compilation, as amended, to add the last paragraph of what is numbered subparagraph 12 which reads as follows:

"(12) To license any public or private institutions, child care facilities, and other agencies providing assistance, care, or other services to children who are crippled, neglected, delinquent, or dependent, or to the aged, blind, feeble-minded, and other dependent persons.

"The power to license vested in the New Mexico department of public health shall include the power to inspect and require reports of any institution that falls within the purview of this act, and to prescribe reasonable rules and regulations relating to licensing procedure, and for the purpose of setting and maintaining standards relating to health, safety, and humane treatment, provided, however, that there shall be no fee charged for such licenses."

A careful reading of the section would grant to the Public Health Department the power to license public or private institutions, and child care facilities or any other agency (1) providing assistance care **or** (2) other services to children who are crippled, neglected, delinquent, or dependent, etc. Therefore, any private or public institution or child care facility or any other agency providing assistance care or the other services to children mentioned, or to the aged, blind, feeble-minded or other dependent persons, are subject to the licensing provisions.

The title to this amendment was as follows:

"An Act relating to the public health, establishing the powers and duties of the New Mexico Department of Public Health to license, and amending Sections 71-103, N.M.S.A."

It is therefore the opinion of this office that the words appearing in the Section, "Public or private institutions, child care facilities and other agencies" are modified by the provisions that they be institutions {\*286} or child care facilities or other agencies providing the following services, to wit; (1) providing assistance care, and (2) other services to children who are crippled, neglected, delinquent, or dependent, or (3) to the aged, blind, feeble-minded and other dependent persons.

We trust this is of some assistance to you in this matter.

By: William J. Torrington

Assist. Attorney General