

Opinion No. 54-5933

April 1, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Lowell C. Green Secretary State Bar Commission Santa Fe, New Mexico

{*381} On March 21st you requested an opinion on whether or not the minutes of the New Mexico Board of Bar Examiners were public records and as such opened to public scrutiny.

Section 13-501, N.M.S.A., 1941 Compilation, p.s., provides as follows:

"Citizens authorized to inspect public records -- Exceptions. -- Every citizen of this state has a right to inspect any public records of this state except records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions and except as otherwise provided by law."

The right of the public to inspect records which are in custody of a public officer, is a common law concept and exists even without statute. **Hollaran vs. McGrath**, 67 P. 2d 838, and **North vs. Foley**, 265 N.Y.S., 780, The statutes restricting such inspection are in derogation of the common law and must be strictly construed.

The statutes concerning admission to practice law, 18-101 et seq., N.M.S.A., 1941 Comp., do not contain any reference to the minutes of the Board of Bar Examiners, and the only reference to the secrecy of any of the work of the Board of Bar Examiners is found in Rule 3, Subsection (6) which rule provides that the grade attained by the candidate taking the examination shall not be divulged, but that the candidate would be advised only whether or not he had passed.

The minutes of the Board of Bar Examiners does not disclose in any way the grade obtained by the candidate, nor does it reveal anything other than the reason for non-admission of a candidate where the Board had refused admission. No discussion pursuant to the qualifications of the candidate are shown, but the minutes merely reflect whether or not the individual passed, if he was subject to examination, or whether or not he was found qualified and if not found qualified, the reason for such disqualification.

The term "public record" has been defined as a record required by law necessary to be kept, in the discharge of a duty imposed by law or directed by law to serve as a memorial in evidence of something written, said or done; or a written memorial made by a public officer authorized to perform that function, or a writing filed in a public office. The elements are that the record be written, that it be made by a public officer, and that the officer be authorized by law to make it. (Either by statute or at common law.)

We believe that the minutes of the Board of Bar Examiners meet the requirements of the definition of public records and as such are required under the common law adopted by this State, and also by Section 13-501, N.M.S.A., 1941 Comp., as amended, to be public records and as such are subject to the inspection of the public.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General