

## Opinion No. 55-6211

June 30, 1955

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

**TO:** Mr. F. A. Vigil, Secretary, New Mexico Board of Pharmacy, 523 Tulane Drive, SE, Albuquerque, New Mexico

You have requested our opinion concerning the following factual situation: An individual is operating a drug store. Within the same building he houses a pharmaceutical and cosmetic manufacturing operation. He has obtained a license for the drug store but refuses to obtain an additional license for his manufacturing activities contending that the one license covers the drug store and the manufacturing activities since both are in the same building.

Section 67-9-18, N.M.S.A., 1953, provides:

"The board of pharmacy of the state of New Mexico shall require and provide for annual registration of every pharmacy, drug store, pharmacy department, prescription laboratory, dispensary, apothecary, drug wholesaler and drug manufacturer in this state. Any person, firm, corporation, or copartnership desiring to operate, maintain, open or establish a pharmacy, drug store, pharmacy department, prescription laboratory, dispensary, apothecary, wholesale drug business or drug manufactory in this state shall apply to the board of pharmacy of the state of New Mexico for a permit or license to do so within thirty (30) days. The application for such permit or license shall be made on a form prescribed and furnished by the board of pharmacy, which, when properly executed, shall indicate the ownership, trustee, receiver, or other person or persons desiring such permit or license, including the name of the registered pharmacist owner or manager in charge or to be placed in charge, as well as the location of such pharmacy, drug store, pharmacy department, prescription laboratory, dispensary, apothecary, wholesale drug business or drug manufactory, including street, name and number, and such other information as the board may require. If it is desired to operate, maintain, open or establish more than one (1) pharmacy, drug store, pharmacy department, prescription laboratory, dispensary, apothecary, wholesale drug business or drug manufactory, separate application shall be made and separate permit or license shall be issued for each."

The above section, prior to amendment, applied to all activities or concerns enumerated therein except "wholesale drug business or drug manufacturing."

The title to the original Act, Section 1, Chapter 84, Laws of 1945, provided:

". . . For the licensing of drug stores . . . ."

The title to the amended Act, Section 1, Chapter 158, Laws of 1951, provided, among other things, that it related to:

". . . Requiring the additional registration of drug wholesalers and manufacturers . . ."

It is apparent that before amendment the terms "pharmacy", "drug store", "pharmacy department", "prescription laboratory", "dispensary", and "apothecary", were terms used interchangeably. They described operations of the same nature. An activity or operation called a "pharmacy" could also be adequately described or comprehended by the other enumerated terms.

However, by amendment to the original class of activities were added activities of a different nature and character, namely, "drug wholesalers" and "drug manufacturer."

It is thus the opinion of this office that a drug manufacturer or a drug wholesaler is required to have for that particular operation, a separate license. The license to operate a drug store does not extend to his manufacturing or wholesaling activities.

You further ask what power is at the disposal of the Board of Pharmacy to enforce the requirement of a separate license for manufacturing and wholesaling activities if such requirement exists.

Section 67-9-26, N.M.S.A., 1953, provides that your Board:

". . . is in power to enforce the provisions of this Act, by injunction and mandamus or other proper legal remedy."

Injunction thus is suggested as a proper and adequate remedy in this case.

I trust that this helps answer your inquiries.

By: Santiago E. Campos

Assistant Attorney General