

## Opinion No. 55-6226

July 13, 1955

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

**TO:** L. C. Boatman, D. O., President, New Mexico State Board of Examiners in the Basic Sciences, P. O. Box 1622, Santa Fe, New Mexico

You have asked an opinion on questions arising out of the following factual situation: Your Board in preparation for an examination to be given as required by Section 67-1-8, N.M.S.A., 1953, secured a series of questions from the Professional Examination Service. Some of these were "completion" or "multiple choice" questions and some were "essay type" questions. These were reviewed by your Board and in its judgment the Board determined that they were suitable and comprehensible for purposes of the examination. After the examination was given to the applicants, the "essay type" questions were assigned for grading to the members of the Board. The "completion" or "multiple choice" questions were returned to the Professional Examination Service for mechanical grading. Upon these being graded they were returned to the Board. The Board thereafter review the results of each applicant's exam. Percentile grades based upon your grading of the "essay type" questions and the Professional Examination Service's grades of the "multiple choice type" questions were given. The anonymity of applicants to the Board required by statute was observed and the necessary notice of results were given.

One applicant who failed, questions the legality of the above procedure and contends that the examination given was not "legal." This contention is based on the assertion that the questions were not prepared nor graded by the New Mexico Board of Examiners in the Basic Sciences.

Your questions in connection with the situation above are:

- "1. May questions prepared by any one, or any agency be considered as questions prepared by the New Mexico Basic Science Board of Examiners if, and after, these questions have been reviewed by the individual members of the Board prior to their use in a qualifying examination before our Board.
- "2. May the results obtained by the employment of any one, or any agency, to evaluate the number of correct answers, be accepted as a basis for grading an examination if, and after, an examination, the Board sits as a Board of Review for evaluating the results obtained by the examination, and affixes a percentile grade to each individual candidate's examination paper in the manner prescribed by statute.
- "3. Should the examination conducted on April 17, in the manner outlined previously be declared a legal examination."

Concerning examinations in the Basic Sciences and relating to the grounds of attack cited by the applicant upon the examination in question, I find the following in the law: After listing various duties of the lay secretary of the Board, it appears in Section 67-1-7, N.M.S.A., 1953:

". . . (6) collect the completed examination papers and transmit the same **to the board for grading**; . . ." (Emphasis supplied)

Section 67-1-8, N.M.S.A., 1953, provides in part:

". . . Every applicant, except as hereinafter provided shall be examined to determine his knowledge, ability and skill in the basic sciences. The examination shall be conducted in writing; all examination questions shall be printed or mimeographed . . . No member of the board, nor the board acting as a whole, shall have or shall exercise the right or privilege of interviewing any candidate or reviewing his record prior to the time his examination papers have **been graded by the board** and publicly posted as hereinabove provided." (Emphasis supplied)

Upon the above, it is my understanding, the applicant bases his conclusion that the Board itself, and no one else, must prepare the examination and grade it. It is this language which leads the applicant to conclude that the procedure engaged by the Board and outlined above did not constitute an examination given by the Board or "graded by the Board." The construction sought upon the statutes is too narrow.

Firstly, preparation of the exam: I cannot see that the statutes require any more than was done in this instance. The Board certainly could adopt as its own, questions prepared by whomsoever in the first instance devised them. If they tested "knowledge, ability and skill in the Basic Sciences" and the Board in its judgment considered them adequate for this purpose it should not matter where the questions came from. The Basic Sciences approach, more so at least than other areas of study, a definite degree of exactness. Questions testing proficiency in this field probably do not change too much. The same questions, though perhaps asked in various ways at different times, are used over and over again.

The preparation of this examination, both "essay" and "completion" or "multiple choice" was, in our opinion, proper under the statute.

Secondly, grading: There can be no question but that the grading of the "essay" type examination was legal and proper. The Board members proficient in a particular subject received for grading those questions in their special field. After grading these were returned to the Secretary. This without doubt constituted "graded by the Board."

The grading of the "multiple choice" or "completion" type questions, although not free of all doubt as to its legality, nevertheless, in our opinion, substantially complied with the requirements of our statutes. It is my understanding that the "multiple choice" questions contained four or five answers, only one of which was correct. This portion of the exam

was graded mechanically by the Professional Examination Service. It is my understanding that the chances for error in the mechanical grading process are, for all practical purposes, non-existent. Upon the return to your Board of the number of correct answers made to the questions by the various examinees, you used this as a basis for your grade. It is my feeling that you have employed an agency to do work requiring no discretion or judgment in grading and for that reason the method employed is acceptable under the statute.

In connection with the questions you present, although dealing with somewhat different statutes, it was said in **Aylward vs. Board of Chiropractic Examiners**, 192 Pac. 2d 929:

". . . If the questions were approved by the board before the examinations were held, it would be entirely immaterial who prepared them. They were of the same type as those approved for previous examinations, and it must be assumed fairly tested the knowledge and fitness of applicants. There is nothing in the statute which requires that the board, as such, actually grade the papers. This task is customarily performed in board examinations by outsiders and certainly may be delegated to a member or officer of the board . . . ."

The answers to all your questions are, therefore, in the affirmative.

I trust this helps answer your inquiries.

By: Santiago E. Campos

Assistant Attorney General