

Opinion No. 58-140

June 24, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker,
Assistant Attorney General

TO: Mr. Paul W. Masters, Administrative Officer Department of Public Health, Santa Fe,
New Mexico

QUESTION

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In determining the presence of syphilis in pregnant women, can the standard serological test be made in a laboratory approved for premarital blood tests as well as in the State Public Health Laboratory?

CONCLUSION

No.

OPINION

ANALYSIS

Chapter 33, Laws 1957, imposed a requirement that each applicant for a marriage license file with the county clerk a physician's certificate based upon examination within thirty days of date as to the applicant's freedom from venereal disease. The statute further provides that the State Department of Public Health shall make regulations necessary to effectuate the statutory purposes, and then provides:

"If regulation requires a laboratory test, it shall be done **in a laboratory approved by the New Mexico Department of Public Health to make such tests.**" (Emphasis added.)

Clearly the statute authorizes the performance of pre-marital blood tests at any laboratory approved by the Department and is not confined in its operation to laboratories operated directly by the Department.

Chapter 108 of the Laws of 1949, relating to serological tests during pregnancy, is so limited. Section 1 thereof, compiled as Section 12-3-16 (N.M.S.A., 1953) provides as follows:

"Every physician attending pregnant women in the state of New Mexico for conditions relating to their pregnancy during the period of gestation and/or at delivery shall, in the

case of every woman so attended, take or cause to be taken a sample of blood of such woman at the time of first examination, and shall submit such sample to **an approved laboratory** for a standard serological test for syphilis.

"Every other person permitted by law to attend pregnant women in the state of New Mexico but not permitted by law to take blood samples, shall cause a sample of blood of such pregnant women to be taken either by a physician duly licensed to practice or by the department of public health and have such sample submitted to the **state public health laboratory** for a standard serological test for syphilis." (Emphasis Added.)

If this section stood alone, it would clearly establish a distinction, permitting licensed physicians to submit blood samples to "an approved laboratory" for testing, but requiring others to submit blood samples to "the state public health laboratory." However, in construing a statute to ascertain the intention of the Legislature, the entire statute must, of course, be considered. See *State vs. Thompson*, 57 N.M. 469, 260 P. 2d 370. Such consideration requires the conclusion that in this instance the Legislature actually intended to limit the testing process to laboratories directly operated by the State Health Department. The provision quoted uses the term "standard serological test for syphilis." That term is defined for purposes of the Act in Section 2, now compiled as Section 12-3-17 (N.M.S.A., 1953) as a test;

". . . approved by the director of the New Mexico department of health, and shall be made at a state public health laboratory. Such laboratory tests as are required by this act shall be made on request without charge at the department of health of the state of New Mexico." (Emphasis added).

Further evidence that the Legislature intended so to limit the testing process appears in Section 4 of Chapter 108, Laws 1949, which specifically provided for an appropriation to the Department to cover the "additional laboratory staff and equipment necessary in carrying out the provisions of this act." Under the circumstances, in our opinion, the rule of statutory construction which governs in construing these inconsistent provisions is the principle that the language of special or particular provisions must be considered to control over general terms or expressions. See *Sandack vs. Tamme*, 182 Fed. 2d 759 (CANM); 82 C.J.S., Statutes, Section 347 (b) (p. 720).

Accordingly, it is our conclusion that serological tests during pregnancy must be made at a laboratory operated directly by the State Health Department, although pre-marital blood tests may be processed by any approved laboratory. It is suggested that the Department may wish to consider recommending legislation in order to standardize the practice in this respect.