

## **Opinion No. 60-185**

October 7, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Paul Marbry Chief Supervisor New Mexico Dry Cleaning Board 325 Korber Bldg. Albuquerque, New Mexico

### **QUESTION**

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1. Does the Supervisor of the State Dry Cleaning Board have authority to inspect a dry cleaning plant doing business within the State of New Mexico but which is physically located outside the State of New Mexico?
2. May the State Dry Cleaning Board refuse to issue a license for a plant which does not meet the minimum safety requirements of the Board?
3. What is the venue for action by the Board seeking enforcement of its rules and regulations?

#### **CONCLUSIONS**

1. Yes.
2. Yes.
3. See analysis.

### **OPINION**

#### **{\*583} ANALYSIS**

It appears that the factual situation giving rise to the questions raised by you is that a dry cleaning proprietor who has been licensed to operate a press shop in a New Mexico community has recently opened a dry cleaning shop just across the state line from New Mexico. He currently is doing his dry cleaning work in this out-of-state shop but bringing such cleaning back into the New Mexico area for the pressing and delivery of the finished items. The out-of-state shop is not licensed by you and appears to be inferior to the minimum health and safety requirements of similar shops located in New Mexico. You are in doubt as to what authority you may exercise over this out-of-state shop.

In considering your questions, I should first like to point out Sec. 67-18-2, N.M.S.A., 1953 Comp., and, particularly, subsection (f) wherein "nonresident outlets", as that term

is used in the Dry Cleaning Act, is defined. The definition is certainly broad enough to include a plant such as that you have described as being located across the state boundary. Next, I should like to direct your attention to Sec. 67-18-8, N.M.S.A., 1953 Comp., and, particularly, subsection (d) which in turn requires the licensing of each such nonresident outlet.

Thus, it is my conclusion that your authority is broad enough to include situations such as that you have described wherein a nonresident plant is doing business within the State of New Mexico. The reference statute directs you to license such establishments and, as a part of the investigation preliminary to licensing under your rules and regulations, you must investigate to ascertain that the minimum requirements relative to health and safety as promulgated by your Board are complied with. This also includes the authority to make certain that these minimum requirements continue to be complied with after licensing.

I might further point out that the authority of your Board to promulgate rules and regulations relating to matters of such nature was tested in the case of **State ex rel. New Mexico Dry Cleaning Board v. Cauthen**, 48 N.M. 436, 152 P. 2d 255. Our Supreme Court concluded therein that such legislative authorization was a lawful delegation of authority and that the exercise of the same was proper *{\*584}* under the police power of the State. Therefore, there can be no question but that your Board has the power to adopt rules and regulations providing for the safety and health of those working in establishments of this nature as well as the general public.

Therefore, it is our conclusion that a nonresident outlet engaged in the dry cleaning or pressing business, as defined in your Act, must, before doing business in this State, obtain a license permitting such an endeavor. It is our further conclusion that preliminary to issuing such a license you may require compliance with all your rules and regulations, including those relating to health and safety.

In response to your third question above, the answer is really twofold. First, if your effort is directed to assessing the penalties imposed for violation of your written orders including rules and regulations, then such efforts must be made in the county where the offense is committed. See Sec. 67-18-12, N.M.S.A., 1953 Comp. In addition to such a remedy, however, your Board shall have the authority to revoke or suspend the license of any person, firm or corporation "knowingly violating any rule or order of the Board." Sec. 67-18-12, *supra*. Of course, before revocation or suspension, notice and hearing must be provided as required by law. This requirement would be as now provided for under the Uniform Licensing Act, 67-26-1, *et seq.*, N.M.S.A., 1953 Comp. (P.S.). As a further remedy, it appears that the Board may seek an injunction against the person, firm or corporation violating any of its orders including rules and regulations promulgated by the Board. Such injunctive relief must be sought in the district (meaning judicial district undoubtedly) wherein the offense or violation occurred. See Sec. 67-18-12, *supra*.

Thus, in summary of our answer to your third question, it appears that the Board may seek relief through any of three means against violations such as you have described, the first being through criminal proceedings in the county where it is alleged an offense has been committed, the second being through suspension or revocation of an existing license through the administrative procedures act and third, through injunction in the judicial district wherein the violation occurred.

I trust this answers your inquiries but should you have further questions, we shall be pleased to discuss them with you.

By: Thomas O. Olson

First Assistant Attorney General