

Opinion No. 64-02

January 9, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General James E. Snead, Assistant Attorney General

TO: Richard N. Carpenter, Special Assistant Attorney General, New Mexico State Board of Embalmers and Funeral Directors, P. O. Box 669, Santa Fe, New Mexico

QUESTION

Statement of Facts

Section 67-20-18.1 (A), N.M.S.A., 1953 Compilation provides for the reciprocal licensing of embalmers and funeral directors licensed under the laws of another state where such other state "Maintains a system and standard of qualification and examination for the licensing of embalmers which is substantially equivalent to those required in this state." Until recently the State of Oklahoma did not maintain such requirements for its licensed embalmers, and therefore there was no reciprocal licensing from Oklahoma to New Mexico. Recently Oklahoma changed its requirements so that they are now deemed "substantially equivalent" to those in New Mexico.

QUESTION

Under the above stated facts, is an embalmer, licensed under the old Oklahoma requirements, now eligible for reciprocal licensing due to the recent change in Oklahoma requirements?

CONCLUSION

No.

OPINION

ANALYSIS

The statutory section pertinent to this opinion provides as follows:

"67-20-18.1 Reciprocal licensing of embalmers -- Written examination not required -- Conditions -- The state board of embalmers and funeral directors, in its discretion and pursuant to its regulations, and otherwise subject to the provisions of Article 67, chapter 20, New Mexico Statutes Annotated, 1953 Compilation, (Being Laws 1947, chapter 7, as amended), may issue a certificate of qualification as an embalmer, without written examination, to any person holding a valid license or certificate of qualification in good standing as an embalmer issued by the proper authorities of any other state or territory

upon payment of a fee of fifty dollars (\$ 50), and upon submission of evidence satisfactory to the board establishing each of the matters hereinafter set out in this section:

A. That such other state or territory maintains a system and standard of qualification and examination for the licensing of embalmers which is substantially equivalent to those required in this state . . ."

Under the set of facts submitted to this office, it appears that the Oklahoma Legislature recently passed a standard of qualification and examination for licensing of embalmers which the New Mexico Board of Embalmers and Funeral Directors believes to be "substantially equivalent" to that of New Mexico within the meaning of the above quoted statute. Until that legislation was enacted by the Oklahoma legislature, the standards and qualifications for licensing embalmers in the state of Oklahoma were not deemed by the New Mexico board to be "substantially equivalent" to those required by law in New Mexico.

In view of the recent legislation by Oklahoma, the New Mexico Board of Embalmers and Funeral Directors have received applications for reciprocal licensing by Oklahoma licensees who were licensed under the old Oklahoma requirements. The question then becomes one of determining whether the recent change in requirements by Oklahoma brings the applicants within the New Mexico reciprocal licensing act. We will assume that there was no requirement in Oklahoma that licensees under the old act requalify under the new standards. With this assumption it becomes obvious that some or all of the applicants who qualified under the old Oklahoma law may not meet the requirements of the new law, but hold their licenses under requirements which the New Mexico board has in the past deemed insufficient to qualify them for license in New Mexico. We see no reason why the New Mexico administrative body should now deem applicants qualified who in the past were unqualified merely because the state of Oklahoma now requires new applicants to meet additional requirements. No citation of authority is needed for the proposition that the requirements set out by the New Mexico Board of Embalmers and Funeral Directors for licensing embalmers were promulgated to protect the health and welfare of the citizens of this state. It is further obvious that the reciprocal licensing act quoted above was written to insure that no one be admitted to practice in New Mexico merely because of his license in another state, where it was determined that the requirements of the other state were not sufficient to insure that the embalmers in that state were qualified to practice the art of embalming in New Mexico. The licensees of the state of Oklahoma under the old act might or might not be qualified to practice the art in New Mexico. Since the old Oklahoma law was not sufficient to establish whether they were so qualified, it is the duty of the New Mexico board to determine this fact by its usual procedures rather than to merely accept a determination by Oklahoma based on different standards from New Mexico.

This interpretation of the quoted statutory section cannot be said to be discriminatory against those licensed in another state since it applied to all those within the class. Indeed, were the interpretation otherwise it would be discriminatory against citizens of

this state since such an interpretation would allow reciprocal licensing to those having less qualifications than are required of applicants originally applying in this state.