

## Opinion No. 67-77

June 8, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Honorable Alex G. Martinez State Senator 1949 Hopi Road Santa Fe, New Mexico

### QUESTION

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1. Under what authority can a public supported institution of higher education in New Mexico set up standards that would deny admission to a New Mexico resident who has earned and received a high school diploma?
2. Does Article XII, Section 10 of the New Mexico Constitution require the admission of children of Spanish descent into the institutions of higher education of New Mexico if it can be shown that these children have not had equal opportunities in their earlier education?

#### CONCLUSION

See analysis.

### OPINION

#### {\*112} ANALYSIS

It is by this time well established that the right to entrance into a public college or university is not a right guaranteed by either the New Mexico or United States Constitution. The Board of Regents of a university have the authority to determine what qualifications are necessary for admission to the college or university and these standards have been consistently upheld so long as they are not arbitrary, capricious, or contrary to law. **Dixon v. Alabama Bd. of Education**, 186 F. Supp 945, (1960), **People ex rel Tinkoff v. Northwestern University**, 333 Ill. App. 224, 77 N.E.2d 345 (1948), **Newman v. Graham**, 82 Idaho 90, 349 P.2d 716, 83 ALR.2d 492 (1960).

In New Mexico the authority to promulgate entrance requirements has been delegated to the boards of regents of the various institutions of higher education. See Section 73-22-7, New Mexico Statutes Annotated, 1953 Compilation (Eastern New Mexico University, New Mexico Highlands University, Northern New Mexico State School at El Rito), Section 73-25-10, New Mexico Statutes Annotated, 1953 Compilation (University of New Mexico), Section 73-26-1, New Mexico Statutes Annotated, 1953 Compilation (New Mexico State University), Section 73-27-8, New Mexico Statutes Annotated, 1953

Compilation (New Mexico Institute of Mining and Technology), Section 73-28-4, New Mexico Statutes Annotated, 1953 Compilation (New Mexico Military Institute).

It is apparent from the above mentioned sections that the institutions of higher education in New Mexico have the authority to set admission requirements. Graduation from an accredited high school does not necessarily make one eligible for entrance into a college or university in New Mexico. While it is not difficult to imagine entrance requirements which could be arbitrary and contrary to law, we do not believe that requiring more than graduation from high school as a prerequisite to obtaining admission to a college or university is in and of itself arbitrary or unreasonable. Indeed it would seem that a high school diploma or its equivalent should be the absolute **minimum** requirement for admission to a college or university. **Newman v. Graham**, supra.

Article XII, Section 10 of the New Mexico Constitution provides:

Children of spanish descent in the state of New Mexico shall never be denied the right and privilege of admission and {*\*113*} attendance in the public educational institutions of the state, and they shall never be classed in separate schools, but shall forever enjoy perfect equality with other children in all public schools and educational institutions of the state . . .

We construe this provision to mean that children of Spanish descent shall always have the same educational opportunities as are afforded other children of the state. The section requires that Spanish and non-Spanish children have the same opportunities. Article XII, Section 10 does not require the admission of children of Spanish descent in the colleges and universities of this state merely because they are children of Spanish descent. It only requires that they not be treated differently because of their Spanish ancestry.

Article XII, Section 10 of the New Mexico Constitution and the Fourteenth Amendment of the United States Constitution should govern the constitutionality of entrance requirements to a college or university in New Mexico only if it could be shown that the entrance requirements were designed to exclude an ethnic group from entrance into the college or university. For example, in **Franklin v. Parker**, 223 F. Supp. 724, Modified 331 F.2d 841 (1964) a Negro, who was a graduate of a Negro university in Alabama sought admission to Auburn University Graduate School. At that time the entrance requirements of the school were such that only graduates of accredited colleges or universities could be admitted to Auburn Graduate School. The plaintiff showed that no negro university in Alabama was accredited and that because of his racial status he had not been eligible for admission to any accredited college or university. The court then held that under the Fourteenth Amendment to the United States Constitution the plaintiff had been denied the equal protection of the laws by the Alabama school officials. It then enjoined the graduate school from refusing to accept the plaintiff on the ground that he was not a graduate of an accredited college or university.

We do not understand the questions presented to allege a situation similar to that mentioned in **Franklin v. Parker**, supra. However, as we have already mentioned, if it can be shown that entrance requirements to New Mexico colleges and universities are designed to exclude any particular ethnic group, the requirement must fall.

By: Joel M. Carson

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