

Opinion No. 71-92

July 22, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. William Henry Mee Attorney New Mexico Legislative Council 334 State Capitol Santa Fe, N.M. 87501

QUESTIONS

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1. Do the procedural requirements of Chapter 54 of the Laws of 1971 apply to all regulations promulgated after June 18, 1971 by the enumerated licensing boards?
2. If a rule is adopted by a licensing board without the notice and hearing required under Chapter 54 of the Laws of 1971, and it is filed with the State Records Center, will it "have the force of law"?
3. May a statutory qualification for licensure "be a graduate of a high school or have completed an equivalent course of study . . ." be changed by a licensing board regulation so as to require a college degree?

CONCLUSIONS

1. See analysis.
2. No.
3. No.

OPINION

{*136} ANALYSIS

With regard to your first question, the wording of Chapter 54 of the Laws of 1971 makes it clear that it is intended to apply to all regulations promulgated by the enumerated licensing boards after the effective date of the act (June 18, 1971) **except** those which could be classified as "emergency regulations." Section 3 of the act says: "No regulation . . . shall be adopted by the board until after a public hearing by the board." It goes on to say: "No regulation . . . shall become effective until thirty days after its filing under the State Rules Act." This mandatory language makes it a requirement that these procedural steps be fulfilled.

The only exception, that of "emergency regulations", is spelled out in Section 4 of the act. This allows regulations to become effective immediately, upon written concurrence of the Governor and filing under the State Rules Act, and **only** "if the board determines that an emergency exists which requires immediate action to protect the public peace, health, welfare or safety."

Your second question asks whether a rule adopted by a board, without having complied with the requirements of Chapter 54 of Laws of 1971 and filed with the Records Center, will "have the force of law." The State Records Center will use a "certificate of compliance" which requires that any agency filing a rule or regulation certify that the procedural requirements of Chapter 54, Section 3 have been fulfilled. Until such certificate is completed by the board in question the Records Center will not accept a regulation for filing. And, as pointed out by Section 71-7-6, N.M.S.A., 1953 Comp. (1969 Supp.) (part of the "State Rules Act")

"No rule shall be valid or enforceable until it is so filed and shall only be valid and enforceable upon such filing and compliance with any other law."

Therefore such a rule would **not** have the "force of law."

Your third question appears to ask whether a statutory licensing provision can be changed by administrative regulation. We are given no facts to indicate that the statute in question permits such a change. Article IV, Section 1 of the New Mexico Constitution states: "The legislative power shall be vested in a senate and house of representatives . . ." A regulation can neither expand or restrict the clearly expressed language of a statute. **State ex rel. McCulloch v. Ashby**, 73 N.M. 267, 387 P.2d 588 (1963). Since the regulation mentioned would have the effect of raising the standard required for qualification it would violate the express {**137*} wording of the statute and would be void.