

Opinion No. 71-67

May 13, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. John B. Wright Member Collection Agency Board Post Office Box 130 Raton,
New Mexico 87740

QUESTIONS

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In addition to the qualifications required for a person actively in charge or a manager of a collection agency which qualifications are contained in Section 67-15-39, N.M.S.A., 1953 Comp., must the applicant also be a "qualified person" as defined in Section 66-15-23 K, N.M.S.A., 1953 Comp.?

CONCLUSION

Yes, but see analysis.

OPINION

{*98} ANALYSIS

Sections 67-15-22, et seq., N.M.S.A., 1953 Comp. is the Collection Agency Act. Section 67-15-39, **supra**, of this Act provides that:

"Except as in the Collection Agency Act otherwise provided, the person to be actively in charge of an agency or office as manager, shall:

- A. Be a citizen of the United States.
- B. Be at least twenty-one years of age.
- C. Be of good moral character.
- D. Be a bona fide resident of this state continuously for at least six months prior to the date of the filing of the application.
- E. Possess the necessary qualifications of learning and ability.
- F. Pass the examination required.
- G. Pay the examination fee to the chief.

H. Have good credit and a reputation for fair and honest dealings."

(Emphasis added.)

{*99} Section 67-15-23, **supra**, the definition section of the Collection Agency Act, provides as follows in Paragraph K:

"As used in the Collection Agency Act, the term 'qualified person' means a person who has met all of the requirements of section 18 [67-15-39] of the Collection Agency Act actively and continuously engaged or employed in the collection of accounts receivable for at least two years [2] next preceding the filing of his application for a collection agency license; Provided, however, that with respect to an agency engaged in the general collection business the qualified person shall have passed the general collection agency license examination." (Emphasis added.)

While Section 67-15-39, **supra**, the first quoted provision above, does not contain the phrase "qualified person," Section 67-15-33, **supra**, dealing with license applications, provides that they may be made only by a "qualified person." Thus the experience requirement of Section 67-15-23, **supra**, is a qualification "otherwise provided in the Collection Agency Act." Section 67-15-39, **supra**.

In Attorney General Opinion No. 60-237 this Office was called upon to interpret the experience qualification language in Section 67-15-23, **supra**. We here quote our conclusion, which we reaffirm:

"It is our opinion that subsection (K), **supra**, does not intend that the collection experience must necessarily have been performed for a collection agency. It appears that had the Legislature so intended, it should have specifically provided that the experience was obtained while employed by a collection agency. The Legislature did not so provide but merely set forth that the experience must be in the 'collection of accounts receivable.'

Thus, it is our view that the question of experience resolves into one of a fact determination, i.e., whether a person has actively and continuously engaged in the collection of accounts receivable for at least two years. If, upon investigation, the administrator determines that the person has been so engaged, then it appears that he has fulfilled that particular requirement.

In conclusion, therefore, it is our opinion that the question of experience is one for administrative determination upon the facts presented but that, as a matter of law, it is not required that such experience be gained while in the employ of a licensed collection agency."

The Collection Agency Board may make this factual determination on the basis of the application plus additional details, if necessary, from the applicant.

By: Oliver E. Payne

Deputy Attorney General