

Opinion No. 73-04

January 17, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Dr. R. J. Wilner Secretary-Treasurer New Mexico State Board of Podiatry 565 St. Michaels Drive Santa Fe, New Mexico 87501

QUESTIONS

FACTS

Podiatrists have formed an association to practice podiatry and have listed it under the association name in the telephone book. Also listed separately are the individual names of the associates.

QUESTIONS

Is a listing in the telephone book of an association to practice podiatry contrary to the provisions of the Podiatry Act?

CONCLUSION

No.

OPINION

{*9} ANALYSIS

At the outset, we note that the Podiatry Act specifically allows podiatrists to associate together for the purpose of practicing podiatry. Section 67-27-15, N.M.S.A., 1953 Comp.

Therefore the question centers on whether a listing in a telephone book of an association to practice podiatry is advertising. Section 67-27-10, N.M.S.A., 1953 Comp. provides that "use of advertising in any manner, except as permitted in section 13 [67-27-13] of this act" is "unprofessional" or "dishonest" conduct which would be a basis for revocation or suspension of the license to practice podiatry.

Section 67-27-13, N.M.S.A., 1953 Comp. (1971 P.S.) provides in part:

"Advertising -- Soliciting. -- A. It shall be considered improper solicitation of the public and subject the person guilty thereof to disciplinary action of the board, as provided in section 10 [67-27-10] of this act, for any podiatrist licensed under this act [67-27-1 to 67-27-16] to do any of the following:

- (1) Employ agents or procurers to secure or solicit the public;
- (2) Advertise in newspapers, periodicals, telephone books, streetcars, or buses, motion picture theaters, circulars, booklets, or on radio or television;
- (3) Inspire newspaper or magazine comment in cases where the podiatrist is involved;
- (4) Boast of, promise, or claim any radical or secret cures, treatments or remedies; or
- (5) Advertise his professional capacity as a podiatrist or a doctor in any shoe store or in, or on, any store advertisement or sign.

B. Nothing in the foregoing paragraphs, however, shall be construed to prohibit the following acts:

- (1) Publishing in ordinary type, as opposed to bold or display type, the name, address and telephone number of any practicing podiatrist in any telephone book;"

Section 67-27-13, **supra**, allows the publishing of name, address, and telephone number of a practicing podiatrist in a telephone book. There is no limit on the number of times which he may so list himself. Also there is no limitation on whether a podiatrist may list himself under his name and under the name of an association. A podiatrist specifically cannot use bold or display type, but whatever else he includes in the telephone book must be advertising to be excluded under Section 67-27-13 (2), **supra**.

No specific definition of the term "advertising" has been accepted. It is used to express a great many variations in the public promotion of business. **State v. Guardian Foundation of Texas**, 128 S.W.2d 880 (Tex. Civ. App. 1939).

Webster's New Collegiate Dictionary defines "advertise" as:

"1.: inform, notify 2a: to announce publicly esp. by a printed notice or broadcast b: to call public attention to esp. by emphasizing desirable qualities so as to arouse a desire to buy or patronize."

Amsel v. Brooks, 141 Conn. 288, 106 A.2d 152, 158 (1954) held that "the word 'advertise' means to give public notice of; to announce publicly, especially by a printed notice; as to advertise a sale; hence, to call public attention to, especially by emphasizing desirable qualities, in order to arouse a desire to purchase, invest, patronize, or the like." See also **Planned Parenthood Committee of Phoenix, Inc. v. Maricopa County**, 92 Ariz. 231, 375, P.2d 719, 723 (1962).

{*10} **Missouri Dental Board v. Eastern Dental Co.**, 256 S.W.2d 832, 834 (Mo. App. 1953) held that the word "advertise" within a statute prohibiting an entity from soliciting or advertising to general public to construct false teeth means to give public notice by emphasizing desirable qualities in order to arouse a desire to purchase.

In **Sassone v. Board of Chiropractic Examiners**, 201 C.A.2d 165, 20 Cal. Rptr. 231 (1962), an invitation to the general public that the chiropractor could bring about a **certain cure** was held to be advertising. "Advertising" means more than merely announcing, making known, or turning the attention of the public toward a certain product. **State v. Guardian Foundation of Texas, supra**. We particularly note that in **Midwest Video v. Campbell**, 80 N.M. 116, 452 P.2d 185 (1969) the Supreme Court refused to accept a broad meaning of the word "advertise" in construing the meaning of "advertising" in Section 67-7-13 (m), N.M.S.A., 1953 Comp. We believe that the broad meaning is also not applicable to Section 67-27-13, **supra**. Therefore, since the listing does not emphasize desirable qualities in order to arouse a desire to patronize, it is not advertising.

Statutes should be construed so that absurdity, hardship, and injustice are avoided and the public interest and convenience are favored. **State v. Board of County Comm'rs of Dona Ana County**, 72 N.M. 86, 380 P.2d 830 (1963). Here it would be in the public interest to be advised of the name of the association under which podiatrists are practicing and to know with whom a particular podiatrist associates. Since the statute specifically allows associating together for the purpose of practicing podiatry, it would be unreasonable to prohibit listing the association in the telephone book. It is fundamental that statutes will be construed so that their application will be neither absurd nor unreasonable. **Montoya v. McManus**, 68 N.M. 381, 362 P.2d 771 (1961).

Therefore, we are of the opinion that a listing in the telephone book of an association to practice podiatry is not advertising and does not violate Section 67-27-13, **supra** of the Podiatry Act.

By: Jane E. Pendleton

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