

## Opinion No. 73-07

January 26, 1973

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Mr. Robert Brito Chairman New Mexico State Board of Pharmacy Albuquerque, New Mexico

### QUESTIONS

#### QUESTIONS

- 1) Does Section 54-11-11, N.M.S.A. 1953 Comp. give the New Mexico State Board of Pharmacy authority to set, by regulation, a registration fee for all persons required to register under the Controlled Substances Act [Sections 54-11-1 to 54-11-39, N.M.S.A., 1953 Comp. (1972 Interim Supp.)]?
- 2) Does Section 54-11-11, N.M.S.A., 1953 Comp. violate the Constitution of the State of New Mexico by granting to the Board of Pharmacy the power to adopt or to set by regulation registration fees without the statutes specifying any statutory maximum?
- 3) Is the \$ 10.00 registration fee specified in Article 20, Section 902 of the Regulations of the Board of Pharmacy reasonable within the meaning of Section 54-11-11, **supra** ?

#### CONCLUSIONS

- 1) Yes.
- 2) No.
- 3) Yes.

### OPINION

#### {\*12} ANALYSIS

As to your question 1, Section 54-11-11, **supra**, clearly grants to the State Board of Pharmacy authority to set registration fees for all persons required to register under the said Controlled Substances Act. It states:

{\*13} " **Regulations.** -- The board may promulgate regulations and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances."

Therefore, since the language of the statute itself is clear and unambiguous no citation to any other authority is necessary.

With regard to questions 2 and 3, these issues are answered in Opinion of the Attorney General No. 65-193, issued October 8, 1965, a copy of which is attached hereto. As stated in that Opinion, it was determined that the granting of authority to the Board of Pharmacy was not an unconstitutional delegation of the legislative authority and, similarly, we see no constitutional prohibition to the granting of the authority contained in Section 54-11-11, **supra**. Additionally, in the said Opinion, we stated that it is presumed that the authority conferred would be exercised with fair and just regard for the interest affected. In that regard, it would appear that the fees set by the Board of Pharmacy meet this standard.

By: James H. Russell, Jr.

Assistant Attorney General