

## Opinion No. 73-24

February 23, 1973

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

**TO:** Mrs. Ruth Dilts Director New Mexico Board of Nursing 505 Marquette Avenue,  
N.W. Albuquerque, New Mexico 87101

### QUESTIONS

#### FACTS

A member of the Board of Nursing was appointed in August of 1967 and served a partial term. At that time the present Nursing Practice Act went into effect and the member was reappointed. The member has served one full term under the present act.

#### QUESTIONS

Can a board member be reappointed for a term of office, if a first appointment was made nine months prior to the re-wording of the law?

#### CONCLUSION

Yes.

### OPINION

#### {\*39} ANALYSIS

In 1968 a new Nursing Practice Act repealed and replaced the former act regarding this subject. Section 67-2-5 C., N.M.S.A., 1953 Comp. (1971 P.S.) of this new law provides:

"No board member shall serve more than two (2) full or partial terms, consecutive or otherwise."

However, the former 1953 law put no limit on the number of terms a member could serve. The 1968 law created a board of nursing and set up a schedule for appointment of the first board under this law. Section 67-2-5 A., **supra**:

"Board created -- Members -- Qualifications -- Terms -- Vacancies -- Removal. -- A. There is created a 'board of nursing.' The board shall consist of five [5] professional nurses and two [2] licensed practical nurses, and not more than two [2] board members {\*40} shall be appointed from any one county. Members of the board shall be appointed by the governor for staggered terms of five [5] years each from lists submitted to him by any generally recognized organization of nurses in this state. Three [3] members shall

be appointed for terms ending July 1 of 1969, 1970 and 1971, respectively; two [2] members appointed for terms ending July 1, 1972; and two [2] members shall be appointed for terms ending July 1, 1973. Thereafter, appointments shall be for terms of five [5] years or less, and made in such manner that the term of one [1] board member expires on July 1 of three [3] successive years and the terms of two [2] board members expire on July 1 of the next two [2] succeeding years. Vacancies shall be filled by appointment of the governor for the unexpired term within sixty [60] days of such vacancy. Board members shall serve until their successors have been appointed and qualified."

There is no provision for carryover of members of the former board of nursing established under the old law. Therefore with the repeal of the old law and the creation of a new board under the 1968 law, a "fresh start" was made as far as membership on the board is concerned. Since the member was appointed in 1968 to serve a term ending July 1, 1973, the member has served only one full term under the present law.

We do not believe that Section 67-2-5, C. **supra** is retroactive. Generally, statutes are presumed to have only prospective effect and are not given retroactive or retrospective effect, unless such intention of the legislature clearly appears. **Clark v. v. Ruidoso-Hondo Val. Hospitals**, 72 N.M. 9,380 P.2d 168 (1963); **Bradbury & Stamm Const. Co. v. Bureau of Revenue**, 70 N.M. 226, 372 P.2d 808 (1962). The legislative intent was clearly to abolish the former board of nursing and create a new one. Individuals appointed in accordance with the 1968 law were the only board members within the scope of that law, and it is irrelevant that they may have served on a former board.

Therefore, we are of the opinion that for purposes of Section 67-2-5 C., **supra** the number of terms served is computed as of the time the law went into effect, i.e., the appointment of the first board under the present Nursing Practice Act. The member in question is eligible for appointment to a second term.

By: Jane E. Pendleton

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