

Opinion No. 75-20

March 14, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Mary M. Catanach Executive-Director New Mexico State Board of Cosmetology
State Land Office Building, Rm. 202 Santa Fe, New Mexico 87501

QUESTIONS

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1. Does the word "member", as used in Section 67-17-9 (B), NMSA, 1953 Comp. (2nd Repl. Vol.), mean a member of the board of directors or does the word "member" mean shareholder?
2. Is a registered school of cosmetology required to comply with all the rules and regulations adopted by the New Mexico State Board of Cosmetology?

CONCLUSIONS

1. See analysis.
2. Yes.

OPINION

{*66} ANALYSIS

Your first question calls for an examination of Section 67-17-9 (B), **supra**, which in pertinent part provides:

"B. Schools of cosmetology shall be conducted as follows: The individual owner of the school, or if a firm or corporation, at least one **member**, shall {*67} hold a valid instructor's license." (Emphasis added.)

The Cosmetology Act, Sections 67-17-1 to 67-17-44, NMSA, 1953 Comp. (2nd Repl. Vol.), does not define the word "member"; we must, therefore, initially resort to rules of statutory interpretation. The cardinal rule of interpretation is that in construing statutes we must find the legislative intent. **Trujillo v. Romero**, 82 N.M. 301, 482 P.2d 89 (S. Ct. 1971) The courts have also said that statutory words are presumed to be used in their ordinary and usual sense. **State v. Grijalva**, 85 N.M. 127, 509 P.2d 894 (Ct. App. 1973).

The Cosmetology Act requires ". . . [t]he individual owner of a school . . ." to be a licensed instructor. Section 67-17-9 (B), **supra**. This is evidence that the legislature intended that at least **one owner** of a school shall be a licensed instructor. Shareholders of a cosmetology corporation are its owners, and accordingly the word "member" must have been used to indicate the legislative intent that one owner of a cosmetology school, whether it is an individually owned school or a firm or corporation, must be a licensed instructor of cosmetology.

Furthermore, we need to determine if the word "member", as used in Section 67-17-9 (B), **supra**, is ordinarily used to represent shareholders or directors of a corporation. The Supreme Court of New Jersey in the case of **Leeds v. Harrison**, 7 N.J. Super 558, 72 A.2d 371 (S. Ct. N.J. 1950) clearly distinguished between the terms "members of a corporation" and "shareholders or directors of a corporation." The court said:

"Unlike most corporations for profit, a corporation not for pecuniary profit normally has no stockholders, but in place thereof it has members. The same rights and liabilities exist between the trustees of a nonprofit corporation and the members as exist between the directors and stockholders of a corporation for profit."

Thus, it is generally well recognized that when referring to **members** of a corporation, it means members of a non-profit corporation, as distinguished from share-holders or directors of a corporation for profit See **State v. North Star Research and Develop Institute**, 294 Min. 56, 200 N.W.2d 410 (S. Ct. Min. 1972), 12a W. Fletcher, **Corporations**, Sections 5687-5690 (1972 Revised Volume), 1 W. Fletcher, **Corporations** 68 (1974 Revised Volume), 18 American Juris Prudence 2d, **Corporations**, Section 460.

New Mexico has adopted a Nonprofit Corporation Act, Sections 51-14-20 to 51-14-40, NMSA, 1953 Comp. (1973 P.S), which defines non-profit corporations, Section 51-14-20 (b), **supra**, and member, 51-14-20 (f), **supra**. Nevertheless, we do not believe that the legislature intended that every corporation organized to teach cosmetology must be a non-profit corporation. If this had been the intent of the legislature, it would have been easy to require this by specific statutory language. This was not done by the legislature, however.

Since the Cosmetology Act does not prohibit schools of cosmetology from being organized as either corporations for profit or as nonprofit corporations, it is only logical that the word "member", as used in 67-17-9 (B), **supra**, is not referring only to a member of a non-profit corporation, but the word "member" also means share-holder in a corporation organized {68} for profit. Therefore, we must conclude that Section 67-17-9 (B), **supra**, requires at least one **member** of a corporation organized not for profit or at least one **share-holder** in a corporation organized for pecuniary gain to be a licensed instructor of cosmetology. Further-more, if a member of the corporation not for profit or a shareholder in a corporation for profit is also a director, then the word "member", as used in Section 67-17-9 (B), **supra**, would also apply to director.

Our answer to your second question is in the affirmative. The New Mexico State Board of Cosmetology has authority to promulgate rules or regulations to enforce the Cosmetology Act. Sections 67-17-26, **supra**, 67-17-33, **supra**, 67-17-35, **supra**. Sections 67-17-35, **supra**, specifies that all rules or regulations adopted to carry out the provisions of the Cosmetology Act shall have binding force and effect.

The New Mexico State Board of Cosmetology did adopt on March 5, 1974 rules and regulations governing cosmetology. If these rules and regulations were adopted in accordance with all applicable laws, they have the force and effect of law and are an integral part of the statute under which they were made just as though they were prescribed in terms therein. **Goldenberg v. Village of Capitan**, 55 N.M. 122, 227 P.2d 630 (1951); 73 C.J.S., **Public Administrative Bodies and Procedure**, Section 107 and 108. Thus, it must be concluded that schools of cosmetology must comply with all rules and regulations of the Board of Cosmetology which were adopted according to the applicable laws.

By: Louis Druxman

Assistant Attorney General