

Opinion No. 76-37

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BY: OPINION OF TONEY ANAYA, Attorney General Albert L Pitts, Assistant Attorney General

TO: Senator Odis L. Echols, P. O. Box 916, Clovis, New Mexico 88101

QUESTIONS

Question

Does the authority of the Health and Social Services Department with respect to promulgating minimum licensing standards extend to both the mental and physical health of children attending child care centers pursuant to the New Mexico Public Health Act?

Conclusion

QUESTIONS

Yes.

OPINION

{*128} Analysis

A state is inherently vested with broad authority to establish and enforce standards of conduct relative to health measures as a vital part of the state's police power. **Barsky v. Board of Regents**, 347 U.S. 442, 74 S. Ct. 650, 98 L. Ed. 829 (1953). Pursuant to this inherent power, the New Mexico Legislature passed the Public Health Act, Sections 12-34-1 through 12-34-22, NMSA, 1953 Comp., as amended, which delegates the authority to specify health standards with respect to child care centers to the Health and Social Services Department ("HSSD"). Generally, public health statutes delegating to administrative agencies the authority to license, regulate and enforce health measures are given a liberal {*129} construction, provided such action tends to accomplish its purpose. **State ex rel. Anderson v. Fadely**, 180 Kan. 652, 308 P.2d 537 (1957); **People ex rel. Barmore v. Robertson** 302, Ill. 402, 134 N. E. 815 (1922).

It is within this context that we consider the scope of the authority delegated to HSSD. HSSD's regulatory power is derived from Sections 12-34-3 and 12-34-5, **supra.**, which grant the Department the authority to prescribe, maintain and enforce regulations for the licensure of health facilities, including child care centers. See Section 12-34-2(E), **supra.** As a condition precedent to the legal operation of a child care center, Section

12-34-5, **supra**, requires licensing of the health facility by HSSD. The scope of the Department's licensing power is set out as follows:

"The department is authorized to . . . prescribe such regulations as it deems necessary or desirable to promote the health, safety and welfare of persons utilizing health facilities."

This statutory language grants HSSD broad discretion in determining what are necessary or desirable regulations promoting the health, safety and welfare of children attending child care centers. The statutory limits herein expressed depend upon the meaning and construction of the terms health, safety and welfare.

As a general rule of statutory construction, popular words retain their ordinary and usual meaning, absent any clearly expressed legislative meaning to the contrary. **Mobile America, Inc. v. Sandoval County Commission**, 85 N.M. 794, 518 P.2d 744 (1974); **State v. Marchiondo**, 85 N.M. 627, 515 P. 2d 146 (Ct. App., 1973). In the New Mexico Public Health Act, there is no indication or suggestion that the legislature intended the terms "health, safety and welfare" to have anything but their plain and ordinary meanings. In the relatively few cases in which the courts have defined these terms, they invariably turn to Webster's Dictionary for their plain and ordinary meanings. For example, "safety" means freedom from danger, **Underwood v. Atlanta & W.P.R. Co.** 105 Ga. App., 340, 124 S.E. 2d 758, 766 (1962), and "welfare" refers to well-doing or well-being in any respect. **Wiseman v. Tanner**, 221 F. 694, 698 (W.D. Wash. N.D., 1914). In contrast, the term "health" escapes precise definition because it assumes new meanings as conditions change. **State ex rel. Anderson v. Fadely, supra**. Recently, the United States Supreme Court considered the meaning of the word "health" in an abortion case in which it was alleged that the word "health" is "imprecise" and "uncertain". The Court rejected this allegation and held the meaning of "health" to include both psychological and physical well-being. This construction is in accordance with the general usage and the modern understanding of the word. The Court quoted Webster's definition of the term as the "state of being . . . sound in body [or] mind." **United States v. Vuitch**, 402 U.S. 62, 91 S. Ct. 1294, 28 L. Ed. 601 (1971). Also see **Venable v. Gulf Taxi Line**, 105 W. Va. 156, 141 S. E. 622, 624 (1928).

Thus, HSSD's licensing power as delegated by the legislature in the Public Health Act should be liberally construed to allow the Department to prescribe, maintain and enforce necessary or desirable regulations to promote the psychological and physical well-being of children attending licensed child care centers. Included within the *{*130}* scope of HSSD's authority is the prescription, maintenance and enforcement of minimum standards for the care given children in licensed child care centers, **provided** such standards bear a reasonable relation to the public health and are reasonably adapted to prevent some existing or anticipated menace. **Nebbin v. New York**, 291 U.S. 502, 54 S. Ct. 508, 78 L. Ed. 940 (1933). **Paramount Pictures v. Langer**, 23 F. Supp. 890 (N.D., 1938), motion granted, 306 U.S. 619, 59 S. Ct. 641, 83 L. Ed. 1025.