

Opinion No. 87-82

December 31, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Sarah E. Alley, Assistant Attorney General

TO: Al Mulliken, President, Board of Dentistry, 907 W. Alameda, Roswell, New Mexico 88201

QUESTIONS

- (1) What is the scope of authority of the new Dental Hygiene Committee?
- (2) Must the Board of Dentistry follow the recommendations of the Committee?
- (3) Is the Open Meetings Act applicable to the Committee?

CONCLUSIONS

The Dental Hygiene Committee ("Committee") may make recommendations about the practice of dental hygiene to the Board of Dentistry ("Board") upon the request of the Board or on its own initiative.

- (2) No.
- (3) Yes.

ANALYSIS

Section 61-5-7.1 of the Dental Act, Sections 61-5-1 through 61-5-9 and 61-5-11 through 61-5-22 NMSA 1978, creates the Dental Hygiene Committee. The Committee is composed of licensed dental hygienists. Subsections 61-5-7.1D and 61-5-7.1E set forth the Committee's powers:

D. Notwithstanding any other provision of the Dental Act [61-5-9, 61-5-11 to 61-5-22 NMSA 1978], no action shall be taken by the board on any of the following areas without first receiving the recommendation of the dental hygienist committee:

- (1) areas and methods of practice for dental hygienists;
- (2) licensure of dental hygienists, including the contents and conduct of any examination;
- (3) disciplinary actions taken against any dental hygienists; or

(4) the promulgation or implementation of any rule or regulation affecting or regulating dental hygienists.

E. The Board shall act in a timely manner on the recommendations of the dental hygienist committee unless the board finds that a recommendation is:

(1) arbitrary or capricious;

(2) beyond the jurisdiction of the dental hygienist committee; or

(3) not supported by the record.

We note that the Board is responsible for licensing dental hygienists. Id. § 61-5-12.

"Recommend" means: "To commend to the favorable notice of another; to put in a favorable light before anyone. A recommendation is not an act of final decisive power --- it merely suggests the desirability of a course of action to be followed by another." *Mora County Board of Education v. Valdez*, 61 N.M. 361, 366, 300 P.2d 943, 946 (1956). The fundamental rule in construing statutes is to ascertain and give effect to the legislative intent. *State v. Chavez*, 77 N.M. 79, 82, 419 P.2d 456, 457 (1966). The legislature's intent must be found in the act's language, and words in the act will be given their ordinary meaning unless a different intent is clearly indicated. *Davis v. Commissioner of Revenue*, 83 N.M. 152, 153, 489 P.2d 660, 661 (Ct. App.), cert. denied, 83 N.M. 152, 489 P.2d 660 (1971). Accordingly, the Committee has no policy making powers. It may only recommend action to the Board, and the Board is free to follow or reject the recommendations. When the legislature directed in Subsection 61-5-7.1E that the Board "shall act in a timely manner" on the Committee's recommendations, it mandated only that the Board take some action on the recommendations, not that the Board accept the recommendations.

The statute generally provides, however, that the Committee is to provide input on all phases of the practice of dental hygiene. We find no requirement that the Committee may make recommendations only upon the Board's request. The Committee may act upon its own initiative.

Our opinion is supported by the following additional considerations. The Committee is administratively and financially attached to the Board pursuant to Subsection 61-5-71F. Had the legislature intended for the Committee to be an autonomous administrative body with its own powers, it would have created another board in a straightforward manner, rather than establish an advisory committee that may only make "recommendations." The legislature also would not have left the authority to issue and revoke dental hygienists' licenses in the Board's hands.

Finally, the Committee must comply fully with the Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA 1978. Subsection 10-15-1A provides, inter alia: " All meetings of any public body, except the legislature, shall be public meetings and all persons so

desiring shall be permitted to attend and listen to the deliberations and proceedings." In *State v. Quinn*, 35 N.M. 62, 64-65 290 P. 786, 787 (1930), the Supreme Court of New Mexico held that a public office has the following characteristics: it must be created by the constitution or statutes, possess governmental power, have some permanency, have powers and duties derived from the legislative authority, and be entered upon by taking an oath. The Committee, which was created by legislative act, and whose members are appointed by the governor and enter office by taking an oath, is a public body.

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