

1979 WL 42885 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 26, 1979

*1 Mr. John C. Wilkie, Jr.
S. C. Board of Pharmaceutical Examiners
P. O. Box 11927
Columbia, South Carolina 29211

Dear Mr. Wilkie:

You have inquired whether or not a member of the Board of Pharmaceutical Examiners who is employed by the South Carolina Department of Health and Environmental Control as a Controlled Substance Inspector of that agency's Division of Certification is qualified to continue as a member of the Board of Pharmaceutical Examiners. The State Personnel Division's Position Questionnaire for that position was enclosed with your letter and is attached hereto.

The qualifications for membership on the Board of Pharmaceutical Examiners was discussed in length in the attached opinion, which was sent to you on November 22, 1978. The issues discussed in that letter appear to be dispositive of the present question. A close reading of the attached Position Questionnaire reveals that the duties of a Controlled Substance Inspector, Division of Certification, do not include the 'dispensing, compounding or sale of any medicinal drugs, medicinal chemicals, pharmaceutical preparations or biologicals,' which duties would require the individual to be a registered pharmacist under [Section 40-43-140 of the Code of Laws of South Carolina, 1976](#).

As far as the Licensure Act for pharmacists is concerned, any of the specific duties enumerated in the Position Questionnaire could be performed with impunity by an individual not possessing a license to practice pharmacy. It follows, therefore, that such an individual, even though DHEC requires him to be a licensed pharmacist, would not be doing business as a pharmacist in this State and, hence, not qualified to serve upon the Board of Pharmaceutical Examiners under [Section 40-43-10 of the Code of Laws of South Carolina, 1976](#).

Consequently, there occurred a vacancy upon the Board of Pharmaceutical Examiners on the date that the Board member in question left the active practice of pharmacy to take the position at the Department of Health and Environmental Control. Since that date, he has served upon the Board as a de facto officer, and his actions as such are valid exercises of the Board's power until his successor is elected and qualified.

Yours very truly,

M. Richbourg Roberson
Assistant Attorney General

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