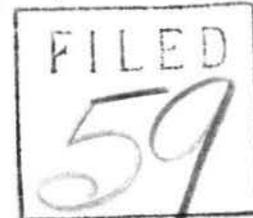


BOARD OF OPTOMETRY: Secretary of board must be selected by the board and cannot be appointed by the Governor.

---

November 7, 1939

Dr. T.J. McWay, Member  
State Board of Optometry  
818 Olive Street  
St. Louis, Missouri



Dear Sir:

We are in receipt of your request for an opinion dated November 4, 1939, which reads as follows:

"I mailed circular under separate cover and appreciate an opinion from you. According to the newspapers our secretary, Dr. J.F. Brawley, has resigned and left the State; also our President, Dr. N.R. Hatfield, has been appointed to succeed him by the Governor. We also understand that Dr. Hatfield also has left the state for a few weeks.

"In his absence can we call a meeting in the absence of our Ex-President and new Secretary? Does the Governor have power to appoint the Secretary under the circumstances? The board names the Secretary according to the law but in case of resignation is it the Governor who replaces him and if so how long should he retain his office?"

Your second and third questions may be answered together, and we shall take them up first.

Section 13498, R.S. Missouri, 1929, is that creating the State Board of Optometry and reads as follows:

"The governor, with the advice and consent of the senate, shall appoint five persons from among such practicing optometrists of the state as have had not less than five years' practical experience in optometry as defined in section 13501 of this chapter, who shall constitute the state board of optometry. No member of any optical school or college, or instructor in optometry, or person connected in any way therewith, nor any person who as owner, stockholder or employe is connected with any manufacturing, wholesale, dispensing or jobbing house dealing in spectacles or optical supplies or instruments used by optometrists' shall be eligible to appointment upon the state board of optometry. On or before the first day of July, 1921, the governor shall appoint members of said board, and the terms of office of the members of said board first appointed shall be as follows: Beginning July 1, 1921, one member shall be appointed for a term of one year, one for two years, one for three years, one for four years, and one for five years. The term of the members of said board successively, shall expire, on the 30th day of June of each year and the term of all members after the first board is appointed shall be for a period of five years and until their successors shall be appointed and qualified. If any person so appointed shall discontinue the active practice of optometry during the period of his appointment his term shall thereupon cease and he

shall be at once removed by the governor. All vacancies, however occurring, shall be filled by appointment by the governor, with the advice and consent of the senate, and appointments made when the senate is not in session shall be confirmed at its next ensuing session. The members of the state board of optometry, before entering upon the discharge of their duties, shall make and file with the secretary of state, the constitutional oath of office. The members of said board shall within thirty (30) days after appointment, and annually thereafter in the month of July, meet and organize by electing a president from among the members thereof, and a secretary who shall also be the treasurer of said board, who shall not be a member of said board, but who shall 'be a reputable practicing optometrist.' The said secretary and treasurer, before entering upon his duties, shall file a bond with the secretary of state in the penal sum of \$5,000.00 payable to the state of Missouri to insure the faithful discharge of his duties in said office. 'The premium for such bond shall be paid from the funds paid into the state treasury by the secretary of the board of optometry.' The said board shall prescribe the duties of its officers and adopt rules and regulations, not inconsistent with this chapter, to govern its proceedings; and also shall adopt a seal; and the secretary shall have the care and custody thereof, and he shall keep the record of all the proceedings of said board, which shall be open at all times

to public scrutiny. All certificates issued by the state board of optometry shall be signed by the president and attested by the secretary with the seal of said board attached to or impressed thereon. Every such certificate shall be prima facie evidence of the right of the holder to practice optometry. The president and secretary shall have the power to administer oaths and the board to take testimony in all matters relating to its powers and duties, and for that purpose shall be able to compel the attendance of witnesses and the production of all necessary books, papers, or documents, upon the proper service of a subpoena in proper form, duly attested. If any person is subpoenaed to appear before the said board and fails to obey the command of said subpoena without reasonable cause, or if any person in attendance upon any hearing or proceeding before such board shall, without reasonable cause, refuse to be sworn or to be examined or to answer a question or to produce a book or paper, he shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than \$50.00, nor more than \$500.00, or by imprisonment in the county jail for not less than one week nor more than one year, or by both such fine and imprisonment, and may be prosecuted therefor in any court of competent jurisdiction, and in case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense."

November 7, 1939

The particular sentence of the foregoing section which bears upon our question is: "The members of said board shall within thirty (30) days after appointment, and annually thereafter in the month of July, meet and organize by electing a president from among the members thereof, and a secretary who shall also be the treasurer of said board, who shall not be a member of said board, but who shall 'be a reputable practicing optometrist.'"

An examination of the statutes creating other boards reveals that in nearly all other cases, all of the officers of such boards are chosen from the members thereof. This is true in the cases of Board of Osteopathic Examination (Section 13515), Board of Dental Examiners (Section 13559), Board of Nurse Examiners (Section 13480), Board of Pharmacy (Section 13147) and Board of Embalming (Section 13539).

It is, therefore, apparent that the Legislature laid stress on the discretionary powers of the State Board of Optometry in that they had the right to elect one not of their number to become secretary. According to the plain wording of the statute, the sole power to designate the secretary lies in the Board and, therefore, he must submit his resignation to those who select him. We fail to find any statute or constitutional authority granting the right to the Governor to appoint such an elective official and believe that the sole power to designate such officer lies in the Board of Optometry. In this connection, we also call your attention to the fact that Dr. N.R. Hatfield who has been appointed secretary, according to your letter, was a member of the board and is, therefore, disqualified as secretary unless his resignation as a member of the board shall first have been submitted and accepted by the Governor.

In regard to your second question, that of the right of the other members to call a meeting, we refer you to the following sentence in the section above

November 7, 1939

cited: "The said board shall prescribe the duties of its officers and adopt rules and regulations, not inconsistent with this chapter, to govern its proceedings; \* \* \*".

In case you fail to find that the board has ever set up regulations to govern a situation such as that at hand, we refer you to Section 13500, R.S. Missouri, 1929, which requires the board to hold meetings at least once in three months. Section 13499 provides that three members shall constitute a quorum, and invests the president with power to call special meetings. In the absence of the president, we do not believe that the other members may call a special meeting unless the rules of the board so prescribe, but that any three members, in the absence of the president, may designate a place and time of meeting in order to comply with the mandatory requirement that a meeting be held at least once in three months.

#### CONCLUSION.

It is our conclusion, therefore, in view of the foregoing, that only the Board of Optometry has the power to select a secretary for such organization and that in the absence of a provision in the rules made by the board for calling a meeting by some member other than the president, any three members may call a meeting at the expiration of three months from the last preceding meeting.

Respectfully submitted,

ROBERT L. HYDER  
Assistant Attorney General

APPROVED By:

---

W.J. BURKE  
(Acting) Attorney General