

Optometry, State Board of

One who has passed state examination but has waited over five years before applying for a certificate of registration, is not entitled thereto.

Filed: #10

November 16, 1934



Dr. J. F. Brawley, Secretary
State Board of Optometry
114 East High Street
Jefferson City, Missouri

Dear Sir:

We have your letter of October 30, 1934 in which is contained a request for an opinion as follows:

"Will you please render me your opinion on the following case?

"We had a man who took the State Board Examination in 1921 and passed the examination. He paid \$10.00 for his Examination Fee but never sent in the \$15.00 for his certificate. After a period of thirteen years he is demanding that the State Board of Optometry issue him a certificate so that he can start practicing.

"As Optometry has made a great progress in the past thirteen years and this gentleman not being in active practice has not kept up with the progress we have made, therefore, the State Board feels as if we should issue his license that we would be putting the man on the public who would not be qualified to practice today as a registered optometrist."

The state laws regarding optometry are set out in Chapter 101 of Revised Statutes of Missouri, 1929, Section 13497 to 13513 inclusive. There is, however, no provision that would expressly take care of the peculiar situation as stated in your letter.

Sections 13503, 13504 and 13506 provide in effect that a certificate of registration shall be issued on application therefor after the examination shall have been passed and the provisions of Chapter 101 complied with. This would seem to place no limit on the length of time that might elapse between examination and application for a certificate of registration. In this connection, however, we direct your attention to Section 13508, quoted infra, which section we believe by analogy shows the clear legislative intent to limit the time referred to above.

Section 13508, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 13508. Renewal of certificate of registration.-- Every registered optometrist and every registered apprentice who continues in active practice or service, shall, annually, on or before the first day of April, renew his certificate of registration and pay the required renewal fee. Every certificate of registration which has not been renewed during the month of April in any year shall expire on the first day of May in that year. A registered optometrist or a registered apprentice whose certificate of registration has expired may have his certificate of registration restored only on payment of the required restoration fee. Any registered optometrist who retires from the practice of optometry for not more than five (5) years may renew his certificate of registration upon payment of all lapsed renewal fees." (Underlining ours.)

From the last lines of the above quoted section it is apparent that the legislature placed the period of five years as the limit of time during which one might be inactive in the practice of optometry and yet have a right to reinstatement. In so much as under Section 13497 Revised Statutes of Missouri, 1929, it is unlawful to practice optometry without a certificate of registration, we must assume that the man referred to in your letter has not engaged in the practice of optometry for thirteen years if indeed he has ever done so. Surely the fact that he never applied for and obtained his certificate can place him in no better position than one who has obtained a certificate and allowed same to lapse.

In the case of State v. Etzenhouser (Mo.) 16 S. W. (2d) 656, the court in speaking of Chapter 101, stated at page 659 as follows:

"The object of the law, in protecting the unwary from being imposed upon with glasses which would not only fail to serve the purpose expected of them, but which may be the cause of actual injury to health and nerves, is a beneficent and proper one. Such statutes should be liberally construed to carry out their purposes. 29 C. J. 243. Price v. State, supra."

In view of our statutes referred to above and the attitude of our courts as expressed in the case quoted from, we are of the opinion

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that the man referred to in your letter is not now entitled to a certificate of registration on the basis of the 1921 examination.

Very truly yours,

CHAS. M. HOWELL, JR.
Assistant Attorney General

Approved:

Attorney General