

Nurse Examiners, State Board of

Where Board holds fees for application never completed for over three years and where applicant cannot be found Board may transfer fees to Nurse's Fund.

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August 10th, 1934

8-11-34

Jannett G. Flanagan, R. N., Secretary,  
Board of Nurse Examiners,  
611 & 616 Central Trust Building,  
Jefferson City, Missouri.

Dear Miss Flanagan:

We have your letter of May 21, 1934, in which was contained a request for an opinion as follows:

"The Missouri State Board of Nurse Examiners in meeting May 3rd, 1934, instructed me to write for the opinion of your office on the subject of fees held where the applicant failed to complete application and apparently left the state without giving a forwarding address. No service was given or license issued.

"Fees are derived from the following:

License by examination .....	\$15.00
License of reciprocity .....	15.00
Provisional license .....	5.00
Annual re-registration of those practicing within the state.....	1.00

"Between 1927 and 1929, four nurses made application for license by reciprocity, sending in the fee with the partial application, but failed to complete the application, and all efforts on our part to locate these persons failed.

"In 1929, we had the verbal approval of the State Auditor at that time to open a savings account in the Board's name, and should we not hear from these applicants in a certain number of years, the amount could be turned into the Nurses' Fund, Sec. 13483, par. 4, R.S. of 1929. The account was opened February, 1929, the interest accruing \$5.04.

"The Board wishes to know if this money can now be transferred. The Board hesitates to make this transfer unless the statute of limitation has been reached for such money, as any refund would be charged against Appropriations, the Board deriving no benefit from the expenditure.

Miss Flanagan - #2  
Aug. 10, 1934

We are ready to act according to your decision on this matter."

Section 13483, sub-section 3, Revised Statutes of Missouri, 1929, provides as follows:

"3. The treasurer shall before entering upon the duties of the office give bond in the sum of one thousand dollars (\$1,000.00) with a surety or sureties to be approved by the board, conditioned upon the faithful accounting for all moneys coming into the hands of such treasurer; shall take charge of and issue receipts for all fees paid to the board and shall forward the same quarterly to the state treasurer to be credited to a fund which is hereby created for the sole use of the state board of nurse examiners."

Section 863 of Article 9, Chapter 5, Revised Statutes of Missouri, 1929, which article prescribes the period within which certain actions must be brought, provides as follows:

"Sec. 863. What within three years. - Within three years: First, an action against a sheriff, coroner or other officer, upon a liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution or otherwise; second, an action upon a statute for a penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the state. (R.S. 1919, Sec. 1318.)"

In view of the above two sections, we are of the opinion that the money referred to in your letter can now be safely transferred to the nurse's fund referred to in Section 13483. From an examination of the annotations listed under Section 863, it is obvious that the use of the term "or other officer," means any state officer. In this connection the case of State ex rel vs. Harter, 188 Mo. 516, 87 S.W. 941 holds that the term "or other officer" applies to the treasurer of a school district within the meaning of the statute. The statute would certainly therefore be taken to apply to the treasurer of your board.

Since more than three years has elapsed we are of the opinion that the money may be transferred with safety.

CMH, Jr: LKL

Very truly yours,

APPROVED: \_\_\_\_\_  
Attorney General

CHAS. M. HOWELL, JR.  
Assistant Attorney General