

BOARD OF BARBER EXAMINERS: May employ ministerial assistants.

g. 26
August 22, 1935.



Hon. J. Frank Davis, Resident
Barbers' State Board of Examiners
618 R. A. Long Building
Kansas City, Missouri

Dear Mr. Davis:

Acknowledgment is made of your oral request for an opinion of this office relative to the power of the Board to employ assistants so as to make possible the enforcement by the Board of Chapter 103 R. S. Missouri 1929. You called particular attention to the rules and regulations which have been promulgated by the Board with the approval of the State Board of Health, consisting of some fourteen rules, directed to the maintenance of sanitary conditions in barber shops, having in view the elimination as far as possible of contagious and infectious diseases. You have also directed attention to House Bill 117 adopted by the 58th General Assembly and approved by the Governor to become affective August 27, 1935. This House Bill is a reenactment of Section 13524, eliminating the proviso heretofore attached to that section and reading:

"Provided this chapter shall not apply to cities or towns in this state which now have or hereafter may have a population of less than five thousand inhabitants."

It is very apparent that by the elimination of this proviso this Chapter has become general and will be effective throughout the State of Missouri in every village, town and city, placing barbers in some eleven hundred additional communities under the jurisdiction of the Board. Having these preliminary facts in mind we shall direct our attention to the solution of the question.

An examination of Chapter 103 reveals that there is no specific statutory authority for the hiring of any deputies

and assistants or employees of any kind or character other than one stenographer whose salary shall be One Hundred Dollars per month. Section 13524.

This being the case we must turn to the general provisions of this act to determine if possible whether or not the duties placed upon the Board are such as may reasonably require the employment of assistants. Section 13523 provides in part:

"A board of examiners, to consist of three persons, citizens of this state for at least three years prior to their appointment, is hereby created to carry out the purposes and to enforce the provisions of this chapter. * * * Said board shall, with the approval of the state board of health, prescribe such sanitary rules as it may deem necessary, with particular reference to the precautions necessary to be employed to prevent the creating and spreading of infectious or contagious diseases. A copy of such rules shall be furnished each person to whom a certificate of registration or permit is granted." * * *

Section 13534 provides that it shall be a misdemeanor to violate any provision of the Chapter "and the board shall proceed against all such persons."

Generally speaking, this Chapter makes it unlawful to follow the occupation of barber in this State without a certificate of registration. Section 13522.

It is required that four public examinations be held each year after due newspaper notice. Section 13526.

The Board is required to collect the sum of Two Dollars per year from each barber practicing his occupation upon application duly made. Section 13527.

Section 13528 prescribes the qualifications of applicants for examination and requires the Board to examine on designated subjects and admit those qualifying.

The Board is required to keep a register of all apprentices and to license those barber schools which are qualified. Section 13529.

The Board must furnish certificate of registration to all those entitled thereto which must be kept in the place of business. Section 13530.

The Board is authorized to revoke certificates of registration upon the conditions enumerated. Section 13532.

Thus we see many duties are imposed upon the Board which is composed of three members. They are required to enforce the rules and regulations and the statutory provisions respecting the operations of barbers. It would appear that without question this is a super human assignment for three men. The Legislature placing these numerous and varied duties must have realized the impossibility of performance solely through the activities of the members of the Board. Assistance of some kind or character is an absolute necessity for the efficient administration of the law. While it is true that the discretionary functions of the Board such, as the admitting of new practitioners to registration and the revocation of the certificates for cause may not be delegated to others, still that is but a small portion of the duties which are placed upon the board by this law, and it is a recognized rule of law that ministerial duties may be delegated to others.

In the case of State ex rel. Bybee vs. Hackmann, 207 S. W. 64, the Supreme Court En Banc had for determination the authority of the State Board of Equalization to employ a stenographer to assist them in the performing of their statutory duties. In this case the Court in authorizing the employing and paying of such assistants stated, h. c. 65:

"Has the state board of equalization authority under the law to employ a stenographer at the expense of the state? If such board of equalization (hereinafter, for brevity, called simply the board) has any such authority, this authority must be bottomed on some statute. For it is fundamental that no officer in this state can pay out the money of the state, except pursuant to statutory authority authorizing and warranting such payment. Lamar Tp. vs. Lamar, 261 Mo. 171, 169 S. W. 12, Ann. Cas. 1918D, 740. But it is also well-settled, if not fundamental, law that, whenever a duty or power is conferred by statute upon a public officer, all necessary authority to make such powers fully efficacious, or to render the performance of such duties, effectual is conferred by implication. Hannibal, etc., Railroad v. County Court, 36 Mo. 303; Walker v. Linn Co., 78 Mo. 650; Sheidley v. Lynch, 95 Mo. 487, 8 S. W. 434.

So much being true, it is urged that, since the statute which defines the duties of the board provides that it may 'take all evidence it may deem necessary,' it follows by necessary implication that a stenographer may be employed to take and transcribe the evidence which the board deems necessary to be taken. We think this contention must be sustained, * * *

This ruling is affirmed in the case of State ex rel. Meals vs. Hackman, 217 S. W. 271.

Another application of this rule is found in the case of Heman Construction Company vs. Loevy, 179 Mo. 455. In this case the plaintiff had instituted action on a special tax bill which the plaintiff contended was void because the President of Public Works did not personally compute and levy the tax. The ordinance and charter provisions provided:

"the president of the Board of Public Improvements shall compute the cost thereof and levy and assess the same as a special tax against each lot of ground chargeable therewith* * *and shall make out and certify to the Comptroller, on behalf of the contractor, bills of such costs and assessment accordingly,* * *".

The President of the Board did not make the calculations on which the tax bill in question was made out, did not know the cost of the work or the frontage to be taxed, did not figure out how much the Defendant's property was liable for, but all of such work was done by one of his appointees, l. c. 461. The Court stated l. c. 467:

"The work that was done by the clerk was not an unlawful delegation of power of the president to the clerk. The work done by the clerk consisted of the physical act of writing the tax bill, and the doing of a very simple sum in arithmetic. The sum required to be done was this: the cost of the work amounting to \$19,328.65 was to be distributed against each lot of property abutting the improvement in the proportion that the frontage of each lot bore to the total frontage of all the property abutting the improvement. The ordinance itself prescribed that the cost should be so distributed. The total frontage of all the property abutting the improvement was 4932.57 feet and the total frontage of the defendant's property was 32.50 feet. Hence the sum to be done was what is

$$\frac{32.50}{4932.57} \text{ of } \$19,328.65?$$

Any school boy could do that sum. When the clerk did the figuring and wrote out the result on a sheet of paper, it did not constitute a special tax bill. But the

instant the president of the board signed his name to the paper, it became a special tax bill, and everything written above his name became his official act, no matter who had written it.

In the very nature of things this must be true, especially as to an office like that of president of the Board of Public Improvements in a large city like St. Louis, where, in addition to his other manifold duties, he has to issue annually more special tax bills than he could write out by himself. To illustrate: In addition to all improvement tax bills, section 29 of article 6 of the city charter provides for sprinkling all the streets of St. Louis, and assessing the cost thereof against all property fronting or bordering on the streets sprinkled, in the proportion that each lot bears to the total frontage of all lots that border upon the streets sprinkled. Practically this requires a special tax bill to be issued every year against every lot in the city. It is apparent that no officer could reasonably be expected to compute, assess and levy and make out all the tax bills that are necessary for this purpose alone, even if he had no other duties to perform. The framers of the law knew no man could do all such work personally, and they must have intended a sensible and rational and practical construction to be placed upon the law, and to have anticipated that the courts could not follow the letter of the law, if it made the law impossible of execution, but would construe the law according to its spirit and purpose."

So in the instant case the framers of the Barber Board Act knew that three men could not do all of the work required of them personally, and they must have intended that a sensible and rational construction be placed upon the act. Especially must this be true in view of the recent enactment of the 58th General Assembly greatly extending the duties of the members of the board in increasing the scope of their work.

While we believe that under the foregoing authorities we may correctly reach the conclusion that the legislature intended that the Board of Barber Examiners employ such assistants as is necessary, we believe that there are additional reasons for our view of the legislative intention.

The first appropriation made to the Board of Barber Examiners was made by the 53rd General Assembly as found at page 44, Laws of Missouri 1925. This appropriation reads as follows:

"There is hereby appropriated out of the state treasury, chargeable to the moneys collected by the state board of barber examiners the sum of twenty-four thousand (\$24,000.00) dollars to defray the expenses of salaries of the members of the board, the pay of deputies, the pay of one stenographer at a salary of \$100.00 per month, traveling expenses, rent, office expense and all other expense incident to the enforcement of the law relating to the inspection of barbers, for the years 1925 and 1926."

Every year thereafter the appropriation to the Board of Barber Examiners has included an item for deputy barber examiners. For example see Laws of Missouri 1929, page 30, Laws of Missouri 1931, page 117, Laws of Missouri 1933, page 92. It is to be noted that the 1933 legislature appropriated but \$8,550.00 for the payment of per diem of the board members, necessary employees, stenographers and deputy barber examiners.

August 21, 1935.

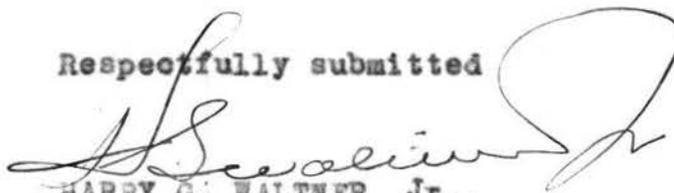
However, in view of the expansion of the jurisdiction of the Board of Barber Examiners the 58th General Assembly appropriated \$29,000.00 "for the per diem of the board members and other necessary employees and the salaries of stenographer and deputy barber examiners." This figure was reduced by the Governor to \$24,000.00.

This is substantial evidence that the Legislature realized the additional duties placed upon the Board by the change of the act in 1935, making provision for the payment of additional employees which would be required for the efficient enforcement of the Act of the Board of Barber Examiners. It is of course axiomatic that legislative construction is persuasive in the interpretation of any substantive enactment and we believe that the legislature has plainly indicated that this act is to be given a reasonable and practical interpretation in view of the duties imposed, and that such interpretation permits and authorizes the employment by the Board of Barber Examiners of a sufficient number of employees to efficiently carry on the duties imposed.

CONCLUSION.

It is therefore the opinion of this office that the Board of Barber Examiners is authorized and empowered to employ a sufficient number of ministerial assistants to enable the Board to efficiently and economically enforce the provisions of Chapter 103 R. S. Missouri 1929.

Respectfully submitted



HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.,
Acting Attorney General

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