

BOARD OF HEALTH: {
COSMETOLOGY: {

Reinstatement of expired certificate discussed.

February 14, 1935. 2-16



E. T. McGaugh, M. D.
State Health Commissioner
Jefferson City, Missouri

Attention: Mr. H. G. Cherry

Dear Dr. McGaugh:

This is to acknowledge Mr. Cherry's letter concerning the following:

"Your letter of January 19 received regarding Mr. Ernest Fiedler, 323 South Ave., Springfield, Missouri, who desires to renew his certificate No. 4, and his license of 1931, No. 1626. I want to call your attention to Section 20 of our law regarding reinstatement of an expired certificate within three years.

Our records show that Mr. Fiedler had a 1931 license that expired December 31, 1931. The three years or time that this certificate should have been restored expired December 31, 1934. The only way that this certificate could be restored would be to issue him a new certificate of 1934 and then allow him to renew his 1934 license by paying the fee of two dollars to secure his 1935 license. This might be done providing we have satisfactory proof of his qualifications to resume practice of such occupation.

We would like to have your opinion as to whether this would be permissible under our law."

Section 9089, R. S. Mo. 1929, provides in part as follows:

"It shall be unlawful for any person in this state to engage in the occupation of hairdresser or cosmetologist or manicurist, or to conduct a hairdressing or cosmetologist's or manicurist's * *, unless such person shall have first obtained a certificate of registration as provided by this article."

Section 9094, R. S. Mo. 1929, provides that a person desiring to practice the occupation provided for in the act shall file a written application detailing qualifications provided for in said section.

Section 9095, R. S. Mo. 1929, provides for the qualifications of applicants.

Section 9096, R. S. Mo. 1929, reads as follows:

"If said state board of health finds the applicant has submitted the credentials required for admission to the examination and has paid the required fee, said board shall admit such applicant to examination or registration."

Section 9098, R. S. Mo. 1929, provides in part as follows:

"If an applicant for examination for operator passes such examination to the satisfaction of the examining board and has paid the fee required and complied with the requirements pertaining to instructors provided in this article, the state board of health shall issue a certificate to that effect, * * *. Such certificate shall

"be evidence that the person to whom it is issued is entitled to engage in the practices, occupation or occupations stipulated therein as prescribed in this article. Such certificate shall be conspicuously displayed in his or her principal office, place of business or employment. * * * * *"

From the foregoing it is seen that every person desiring to practice the occupation of cosmetology, hair-dressing or manicuring, must possess certain qualifications and be licensed by the State Board of Health. The Board determines one's qualification by means of an examination.

Section 9101, R. S. Mo. 1929, provides in part as follows:

"All who are engaged in the actual and continuous practice of any of the practices of the qualified occupations named in this article, prior to the passage of the same shall be entitled to a certificate to practice hereunder without an examination upon the payment of a fee of five dollars."

Article 5, Chapter 52, relating to "Cosmetologists, Hairdressers and Manicurists" was enacted in 1929. The Legislature exempted persons engaged in practice of the occupations provided for in said article from taking the examination if they were engaged in such practices at the time of the passage of the Act. We, therefore, conclude that every person, to practice the occupations enumerated in said article and chapter, must have a certificate, and the Act provides for the obtaining of said certificates by two means: (1) By examination; and (2) by being engaged in the practice at the time the Act took effect. In either event, no person is permitted to practice unless such has a certificate from the Board.

Section 9103, R. S. No. 1929, provides as follows:

"The holder of a certificate issued by the state board of health who continues in active practice or occupations shall on or before the 31st day of December, 1930, renew his or her certificate and pay the renewal fee of two dollars. A certificate which has not been renewed prior to the 31st day of December in any year thereafter shall expire on the 31st day of December in that year. The holder of the expired certificate may have the certificate restored within three years of the date of expiration upon the payment of the delinquent renewal fee of fifteen dollars and satisfactory proof of his or her qualifications to resume practice of such occupation."

We invite your attention to the fact that a holder of a certificate must renew same annually and if it is not so renewed "the holder of the expired certificate may have the certificate restored within three years of the date of expiration upon the payment etc." The legislature by this section intended that one holding a certificate must renew it annually, and failure to do so within three years left the person in the same position as one never having a certificate. Thus, the failure of a person holding a certificate to renew it within three years means that such person in order to again be licensed and obtain a certificate of registration must start anew the same as one never holding a certificate. The statute says "within three years", and although it is plain and unambiguous, nevertheless, we shall define the word "within."

In *Door et ux. v. Bankers' Surety Co.*, 218 S. W. 398, 1. c. 400-401, the St. Louis Court of Appeals said:

"In the instant case the contract specifically provided that the entire

"contract price should be paid in certain installments as the work progressed, and the final payment of \$3,616 should be made within 10 days after the completion of the work. This clearly gave the owner, in the absence of any notice of default on the part of the contractor, the right to make the final payment at any time within 10 days after the completion of the work. The word 'within,' as used in the provision, does not necessarily mean at the end of 10 days, but, as it plainly says, payment can be made, within 10 days, which means at any time within 10 days."

Words & Phrases, 3d series, Vol. 7, page 1057, has the following to say concerning the word "within":

"The use of the word 'within' as a limit of time, or degree, or space, embraces the last day, or degree, or entire distance, covered by the limit fixed. Rice v. J. H. Beavers & Co., 71 So. 659, 196 Ala. 355."

CONCLUSION.

In your letter you state that your records show that a person "had a 1931 license that expired December 31, 1931" and "the only way that this certificate could be restored would be to issue him a new certificate of 1934 and then allow him to renew his 1934 license by paying the fee of two dollars to secure his 1935 license." You inquire, "We would like to have your opinion as to whether this would be permissible under our law." The answer, in our opinion, is in the negative.

The method you propose to restore this person's certificate would be a subterfuge to evade the plain provisions of the statute. The statutes prescribe your duties and should be followed, and any attempt to evade same indirectly does not have the sanction of the law. It follows that the person in order to obtain a certificate must file an application, take the examination etc., the same as one would have to do that never had been licensed. As a further observation, we say to you that your present so-called "five year extension plan" (presumably executed under Section 9101, supra) is illegal and without the statutes. Thus, if a person was practicing at the time the Act went into effect you could not license him now after the lapse of five years, as Section 9101, supra, intended to apply only if taken advantage of at the time the Act went into effect.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JLH:EG