

Barber Board:

The moral character of an applicant for a barber's certificate is within the discretion of the board of examiners, conviction of a crime may be taken in consideration in determining same.

April 2, 1937

H-15



Mr. J. H. Skaggs, Treas.
Barbers' State Board of Examiners
405, 100 N. Broadway Bldg.
St. Louis, Missouri

Dear Sir:

We are in receipt of your request for an opinion which reads as follows:

"I have a party who has applied for permit to do barbering. But I do not feel justified in issuing such permit without advice from your office.

"The party in question is Tony Guarino, who was convicted in our Federal Courts in St. Louis, Missouri on March 28, 1935, and was sentenced to a term of two years in the Leavenworth Penitentiary. He was released on December 4, 1936, and is now applying for a permit to do barber work.

"And as Section 13532 Revised Statutes of Missouri 1929 provides that the Board should revoke licenses upon conviction of a crime, I am wondering whether or not it would be proper to issue a permit to a person who had been so convicted.

"Please give me your opinion as to whether or not our office would be justified in issuing such permit."

Section 13528 Revised Statutes Missouri, 1929, which deals with the examination of applicants for a qualified certificate, provides in part, as follows:

"* * * * whereupon said board shall proceed to examine such person, and, being satisfied that he is above the age of nineteen years, of good moral character, * * * *"

The status of a state board which has the power to examine and issue license is aptly stated in State ex rel Granville v. Gregory 83 Missouri 123, wherein, the court states:

"* * * *the board of health, in the discharge of duties in reference to the issuance of certificates (to doctors), is engaged in the performance of those things which essentially partake of a judicial nature requiring the exercise of judgment and the employment of discretion."

Practically the same rule is expressed in State ex rel Lentine v. State Board of Health 65 S. W. (2d) 943 l. c. 949:

"* * * *the question whether the acts or conduct charged are such as to constitute unprofessional and dishonorable conduct or render the licentiate a person of bad moral character within the purview of the statute 'calls for the exercise of judgment and sound discretion' on the part of the board of health"

It is, therefore, within the discretion of the board whether the applicant is of good moral character or not. Character is, as said in Harrison v. Lakenan

187 Missouri 581, 88 S. W. (2d) 53, "what a person is, character is in himself." However, as was pointed out in Lindsay v. Bates 122 S. W. 682,

"Character is a continuous quality, not quickly changed or changeable * * * his character at another time may well be considered as evidencing his character at the time of testifying."

Does a previous conviction of a crime of itself make a person of such bad moral character that his application for a license should be refused? Speaking of a pool license, the applicant for which must be of good moral character, the court in State ex rel McClanahan v. DeWitt 160 Missouri Appeal 308, 142 S. W. 366 said:

"We believe the law lodges in the court the discretionary power to refuse such license, when in their opinion there are reasonable grounds to apprehend that the person applying is not a suitable person * * *. For instance, the applicant may be an habitual lawbreaker."

In the case of In re Casablanca 30 P. R. C. 368, the court held,

"If the act first committed twelve years ago stood alone, we might say perhaps that the applicants good conduct thereafter made him worthy of the honor of being admitted to practice law. But the applicant has quite recently relapsed and committed an act equally serious * * *. We do not mean to say that Casablanca is forever barred from the profession. Perhaps by repeated acts showing permanent reformation he may sat-

isfy this same court that he is qualified."

Finally, it seems to be the rule that where good moral character is a requirement that the burden of proving same is upon the applicant, *Rosencranz v. Tidrington* 193 Ind. 472, 141 N. E. 58, *Spears v. State Bar* 294 Pac. 697, 211 Cal. 183.

CONCLUSION

It is, therefore, the opinion of this department that the moral character of an applicant for a Barber's certificate is a question of fact which must be determined by the State Board of Examiners. The character should be determined from all the evidence and conviction of a crime is evidence that may be taken into consideration with the rest of the evidence in determining such character.

Respectfully submitted,

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APPROVED:

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AO'K:JMW