

OPTOMETRY -- Restoration of expired license must be made when statutory fee for same be tendered.

May 13, 1938

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Dr. J. F. Brawley, Secretary
Mo. State Board of Optometry
Jefferson City, Missouri

Dear Sir:

We acknowledge your letter of May 9, 1938 requesting an opinion, which letter reads as follows:

"Will you please give me an official opinion if such a ruling of the Missouri State Board of Optometry is within the Laws regulating the practice of Optometry in Missouri

'The Board has ruled that any registered Optometrist who has retired from the practice of Optometry for more than five years, cannot renew his certificate of Registration without taking another Examination of the Missouri State Board of Optometry'. "

Section 13508, R. S. Mo. 1929, provides:

"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 upon 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."

Section 13510, R. S. Mo. 1929, provides:

"*The fee to be paid upon the renewal of a certificate of registration is \$5.00. The fee to be paid for the restoration of an expired certificate of registration as a registered optometrist is \$10.00. The fee to be paid for the restoration of an expired certificate of registration as a registered apprentice is \$2.00."

Section 13512, R. S. Mo. 1929:

"The state board of optometry may adopt reasonable rules and regulations relating to the enforcement of the provisions of this chapter."

46 C. J. page 1034, Section 295, reads:

"Rules and orders made by administrative boards must accord with the authority conferred upon the board by law."

In the case of Little River Drainage District vs. Lassater, 29 S. W. (2d) 716, l.c. 718; 325 Mo. 493, the Supreme Court said:

"It is the duty of the courts, in construing two or more statutes dealing with the same subject, to read them together and to harmonize them if possible, and to give force and effect to each."

CONCLUSION

Section 13512, supra, gives the Optometry Board power to make "rules and regulations" relating to the enforcement of the provisions of Section 13508 and Section 13510, supra.

We look to the substance of the rule of the Optometry Board as quoted, supra, to see if said rule conflicts with the legislative provisions of Sections 13508 and 13510, supra. The Optometry Board does not have power to make a rule which conflicts with or nullifies express legislative provisions, where the Legislature has expressly provided for renewal of certificates.

The statutes above quoted should be construed together to determine legislative intent. The language of the Legislature is not ambiguous. The Legislature has expressly provided that optometry licenses not annually renewed in April with a \$5.00 renewal fee, will definitely expire on May 1st of the same calendar year, and that after the latter date, the expiration certificate of registration may be restored upon payment of all accumulated annual renewal fees at the rate of \$5.00 per year, plus an additional \$10.00 for restoration of said license. When such a tender in full is made, the Optometry Board is legally bound to accept and restore the license.

We are of the opinion that the rule of the Optometry Board requiring an examination before restoration of an optometry license, is void, as made contrary to existing statutes on the subject. Said rule purports to restrict

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a statutory right of restoration of license to an individual to an examination before the Board before restoration, and the Legislature did not intend an examination before the Board as a condition precedent to the right to restoration. In such cases, the Legislature intended only the payment of delinquent fees.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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