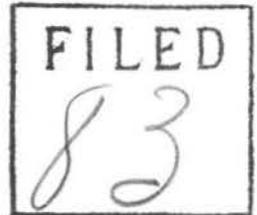


STATE BOARD OF BARBER EXAMINERS:
LICENSE:

Answers to three questions
regarding the revoking and re-
issuing of barbers' licenses.
Term "revoke" defined.

December 9, 1943



Mr. Harry G. Sloan, President
State Board of Barber Examiners
4617 Troost Avenue
Kansas City, Missouri

Dear Mr. Sloan:

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

I respectfully submit herewith a question
which will be helpful to our board in re-
gard to the construction of Section 10137,
Revised Statutes of Missouri, 1939. The
particular question is this:

"After the State Board of Barber Examiners
has held a hearing in regard to the revo-
cation of the license of a barber and where
proper service of the notice of the hearing
has been fully complied with, and after a
hearing the board reaches a decision revok-
ing the license of the barber, does the
board have the authority to change its de-
cision and restore the license to the
barber without an additional hearing and
introduction of evidence?

"Second, does the original decision of the
board revoking the license of the barber
become final and without power of modifica-
tion of the board until the expiration of
the ninety days at which time the statute
provides that the person whose license has
been revoked may, after the expiration of
ninety days, apply to have the same re-
issued upon the satisfactory showing that
the disqualification has ceased?

"Third, if the board does have the power to
change or modify its decision without appli-
cation therefor and on its own motion and
without the hearing of additional evidence
within what time should such action be
taken?"

Section 10137, R. S. Mo. 1939, reads as follows:

"Said board shall have power to revoke any certificate of registration or permit granted by it under this chapter for conviction of crime, habitual drunkenness, gross incompetency, failure or refusal to properly provide or guard against contagious or infectious disease, or the spreading thereof, in the practice of the occupation aforesaid, or violation of the rules of the board mentioned in section 10128 of this chapter, or for any extortion or overcharge practiced: Provided, that before any certificate or permit mentioned in this chapter shall be so revoked, the holder thereof shall have notice, in writing, of the charge or charges against him, and shall, at the day specified in said notice, at least five days after the service thereof, be given a public hearing on said charges and full opportunity to produce testimony in his behalf and to confront the witnesses against him. Any person, firm or corporation whose certificate or permit has been so revoked may, after the expiration of ninety days, apply to have same reissued upon a satisfactory showing that the disqualification has ceased."

It will be noted from a reading of this section, supra, that any person, firm or corporation whose certificate or permit has been so revoked may, after the expiration of ninety days apply to have same reissued under a satisfactory showing that the disqualification has ceased. In considering the wording of this portion of the statute, we first call attention to the fact that the section uses the words "certificate or permit." These words are synonymous with the word license, and in Section 10,132, R. S. Mo. 1939, which section is a part of the same article containing Section 10,137, supra, we find this wording:

"* * For any and every license
or certificate given or issued
by the board * * * *"

So, we must conclude that it was intended by the legislature, through the use of the words certificate or permit, that these words be used as synonymous terms with the word license. This being true, we shall next endeavor to define the word license, as follows:

"A permit or authorization to do what without a license would be unlawful. 15 R.C.L. 247.

"To license means to confer upon a person the right to do something which otherwise he would not have the right to do.

"A license is in the nature of a special privilege, and not a right common to all. 17 R.C.L. 474."

It will further be noted that the legislature used in this section the word "revoke" and does not use the words "suspend" or "renew." It is our view that the legislature intentionally left out the words "renew" or "suspend" and intended that the word "revoke" should carry its regular and ordinary meaning. We say this for the reason that in Section 10,121, which section is contained in Chapter 66, R. S. Mo. 1939, or which we copy a portion, merely for the purpose of comparison to show that the Legislature in giving powers to other boards which are ministerial in character used the words "renew, suspend and revoke." Said section reads in part as follows:

"The state board of optometry may either refuse to issue, or may refuse to renew, or may suspend, or may revoke any certificate of registration for any one, or any combination, of the following causes: * * *"

Now turning to the meaning of the word "revoke" we quote from Black's Law Dictionary wherein the word is defined as follows:

"Revoke. To call back; to recall; to annul an act by calling or taking it back."

The word revoke is similarly defined in the case of Burns v. State, 76 S. W. (2d) 172, l. c. 176, wherein the court said:

"* * * * Revoke means to 'annul by taking back.' The license was taken back to its source * * * * *"

Therefore, it is our view that it was the intention of the Legislature that Section 10,137, supra, should be construed to mean that if the Barber Board, in their discretion, exercised their rights under said section and revoked an outstanding certificate, permit or license, such certificate or permit should be permanently revoked. In this connection, we call attention to the case of State ex rel. Ball v. Board of Health, et al, 26 S. W. (2d) 773, l. c. 777, wherein the court had this to say:

"* * * For the reason stated, we hold that it was not necessary for the record to affirmatively show that the board found relator guilty of the offense charged, as a prerequisite to the order revoking the license. Neither do we think that the order revoking the license is void because it does not state a period of time for which the license was revoked. The statute provides that the license shall be revoked for such period of time as may be agreed upon. The members of the board may agree to revoke for a limited period of time or for all time, and where, as here, the order revoking the license does not name any specified period of time, it necessarily means a permanent revocation for all time."

While it is true that the court in this case had before it a different section of the statutes, and a section which applied to a different board than the court in this opinion, it is our view that the reasoning used in that case would apply to Section 10,137, supra, and we must conclude that where a certificate or permit is revoked, such revocation must be construed to mean permanent, and we so rule on that point.

However, we point out that the section further provides that after the expiration of ninety days, the person, firm or corporation whose certificate or permit has been revoked may apply to have same reissued, upon satisfactory showing that the disqualification has ceased. By the term "reissued" we think it is clearly the intention of the Legislature that the Board, if they see fit, may reissue the certificate, permit or license which they recalled or revoked. As is pointed out in the definition, a certificate, permit or license, as used in this section and other sections contained in this article of the statutes, is in the nature of a special privilege and the Board has a right to grant such certificate, permit or license to persons who meet the qualifications as laid down by the Legislature or by the Board.

Now turning to the three questions asked in your opinion request, the first question is: "Does the Board have the authority to change its decision and restore the license to the barber without any additional hearing and introduction of evidence?" We answer this question in the negative for the reason that it will be noted that Section 10,137 places a prohibition against the person, firm or corporation whose certificate has been revoked from again applying until the expiration of ninety days. This being true, during the interim of ninety days, the Board would have nothing before it on which to act. In fact, they would not know as a matter of record whether the person, firm or corporation desired a re-issuance of their license.

Further, in Section 10,132, R. S. No. 1939, we find this provision:

"* * * For any and every license or certificate given or issued by the board, a fee of two dollars (\$2.00) shall be paid by the person receiving same. * * *"

If the board attempted to reissue a license on its own motion, we do not see how this condition in Section 10,132, supra, could be met, for if the licensee were permitted to pay the \$2.00, then he would be doing indirectly that which he could not do directly until the expiration of ninety days and would amount to a subterfuge.

Your Question No. 2 reads in part as follows: "Does the original decision of the board revoking the license of the barber become final and without power of modification by the board until the expiration of ninety days * * * *?" Our answer to this question is in the affirmative. We say this for the reason that as heretofore pointed out in this opinion, it is our view that the Legislature, through the use of the word "revoke" and the exclusion of the words "renew" or "suspend" intended that when a license or certificate was revoked, it should be permanent. Of course, the additional authority given to the board that such license may be reissued when after the expiration of ninety days the original licensee can make satisfactory showing that the disqualification has ceased, does not in any way detract from the meaning of the word "revoke." This being true, when the board, in its discretion, exercised its rights under Section 10,137, supra, and revoked the license or permit, the same became final, and the board is without power to modify its ruling for the reason the board, when it revoked the license, would have ascertained through a proper hearing whether or not there were good and sufficient reasons for revoking said license.

It is further our view that through the granting of the additional authority to the board to reissue the license after the expiration of ninety days, and upon a showing by the applicant that the disqualification had ceased, allows the board to issue the new certificate or license on the former qualifications of the applicant, thereby permitting the applicant to obtain a new certificate or permit without again taking the qualifying examinations.

Your third question reads as follows: "If the board does have the power to change or modify its decision without application therefor and on its own motion and without the hearing of additional evidence within what time should such action be taken?" In view of what we have heretofore said in this opinion, your third question becomes a nullity, for the reason that we have ruled that your board would not have the authority to modify its decision where you have once revoked a license through a proper order, and having done so, you would have destroyed and extinguished the license.

CONCLUSION

1. It is the opinion of this department that the State Board of Barber Examiners, having once revoked a license upon

a proper hearing, has no authority to restore that license on their own motion.

2. Further, the State Board of Barber Examiners is prohibited from entertaining an application for the reissuance of a license, as is provided for in Section 10,137, supra, until the expiration of ninety days.

3. When a license is reissued after the expiration of ninety days, as is provided for in Section 10,137, supra, it is in effect a new license. However, the applicant may obtain such license without again taking the qualifying examinations.

The term "revoke" as used in Section 10,137, supra, means to call back; to recall; to annul an act by calling or taking it back.

In view of your direct statement in Question No. 1, we exclude from this opinion a situation where a license was revoked because of fraud or mistake.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

BRC:NH