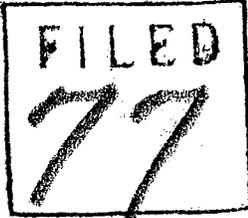


STATE VETERINARIAN:
VETERINARY BOARD:
AGRICULTURE:

A person is entitled to a non-graduate license to practice veterinary medicine only if such person has, for each year during the twenty years immediately preceding the effective date of Section 340.040 RSMo Cum. Supp. 1955, made the greater percentage of his income from the treatment of animals, and who has resided in the same town or community during said period.



December 10, 1956

L. A. Rosner, D.V.M.
Chairman
Missouri Veterinary Board
Jefferson Building
Jefferson City, Missouri

Dear Dr. Rosner:

Reference is made to your request for an official opinion of this office, which request reads as follows:

"At Section 340.040, Revised Statutes of Missouri 1949, provides as follows:

" 'Any person who for each year during the past twenty years has made the greatest percentage of his income from the treatment of animals and who has resided in same town or community during this time shall be issued a non-graduate license upon filing proof of these qualifications with the Board.' "

"Some question has arisen as to the twenty year period in that it has been contended on one hand that the twenty years starts to run as of the time of the beginning of the qualified activity until the time of the effective date of this Act. On the other hand it has been contended if the twenty year period might well cover the period from the beginning of the time of the qualified activity until the time of the making of the application by the applicant, which, of course, might be made several years after the enactment of the Act.

"We are most concerned since the Board was of the opinion that the effective ending date of the twenty year period would be the effective date of the Act, therefore, we should like to have your opinion as promptly as is possible on this matter."

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Section 340.020, RSMo Cum. Supp. 1955, provides that it shall be unlawful for any person not licensed as a veterinarian under the provisions of Chapter 340, RSMo Cum. Supp. 1955, to practice veterinary medicine.

Section 340.180, RSMo Cum. Supp. 1955, provides that any person who shall violate any of the provisions of this chapter shall, upon conviction, be deemed guilty of a misdemeanor.

Section 340.040, RSMo Cum. Supp. 1955, provides, as you indicated, that a person who, for each year during the past twenty years, has made the greater percentage of his income from the treatment of animals, and who has resided in the same town or community during such time, shall be entitled to a non-graduate license upon filing proof of these qualifications with the board.

You now inquire whether the twenty-year period above referred to is determined from the beginning of the classified activity until the effective date of the act, or whether said period is from the beginning of the qualified activity until the time of the making of the application for licensure. An almost identical question was presented in the case of Higgins v. Board of Medical Examiners, 104 Pac. 953. In that case the statute provided that "all persons who have made the practice of medicine and surgery their profession or business, continuously, for the period of ten (10) years, within this state, and can furnish satisfactory evidence thereof to the State Board of Medical Examiners, shall receive from said board a license". Plaintiff, who was not a graduate in medicine, brought suit to compel the Board to issue him a license under the above-noted provision, claiming that he had practiced medicine and surgery for a continuous period of ten years, part of which time was after the passage of the licensing act. In disposing of this question the court said:

"The plaintiff in error relies upon the concluding sentence of section 4 to sustain him. He insists that the practicing of medicine and surgery for any continuous period of 10 years, whether before or after the passage of the statute mentioned, although in defiance of law, entitles him to a license, while it is the contention of the board that no person is entitled to a license from the board unless: (1) He proves that he is a graduate of a legally chartered medical school of good standing. (2) He passes a satisfactory examination. (3) He proves that he has made the practice of medicine and surgery his profession

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or business continuously for the period of 10 years prior to the passage of the act.

"Section 12 of the act provides that the person who practices medicine in the state without a license from the Board of Medical Examiners shall, upon conviction, be punished by fine or imprisonment, or both; and to adopt the plaintiff in error's construction would be to reward, not punish, those who elude prosecution for the period of 10 years. The law should not be so construed, and we hold that the contention of the board is correct, and that those only who have practiced for 10 years prior to the passage of the law of 1881 are exempted from the provisions of the statute requiring examination and proof of graduation. In the case of State v. Wilson, reported in 61 Kan., at page 791, 60 Pac. 1054, that court said: 'Can it be that the Legislature intended that a person might qualify himself for the practice by that which the act prohibited? Is the direct and persistent violation of the law to be deemed the equivalent of character, education, experience, and skill which the statute requires for the protection of life and health?' These identical questions are presented to us, and we do not hesitate to answer them in the negative."

We believe that the reasoning contained in the above-noted case would likewise be applicable to Section 340.040, RSMo Cum. Supp. 1955, and that the proper interpretation of said section would require a holding that the twenty-year period referred to means before the passage of said section. We believe that such conclusion is further evidenced by the fact that Section 340.040, RSMo Cum. Supp. 1955, refers to the "past" twenty years, which language unequivocally places the period prior to the effective date of the act.

CONCLUSION

Therefore, it is the opinion of this office that a person is entitled to a non-graduate license to practice veterinary medicine only if such person has, for each year during the twenty years immediately preceding the effective date of Section 340.040, RSMo Cum. Supp. 1955, made the greater percentage of his income from the

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treatment of animals, and who has resided in the same town or community during said period.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

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