

CHIROPRACTIC
LICENSES:

1. The State Board of Chiropractic Examiners has the authority not to renew a license to practice chiropractic for non-compliance with the two-day educational requirement or non-payment of the ten dollar annual renewal fee as required by subsection 2 of Section 331.050, RSMo 1969. 2. If there are other allegations or complaints which justify disciplinary action against a licensee, the State Board of Chiropractic Examiners must file a complaint with the Administrative Hearing Commission as provided in Section 161.282, RSMo 1969.

OPINION NO. 67

March 25, 1971

Dr. James A. Mertz, D.C.
Secretary, State Board of
Chiropractic Examiners
5121 South Kingshighway
St. Louis, Missouri 63109



Dear Dr. Mertz:

This is to acknowledge receipt of your request for a formal opinion from this office which reads as follows:

"The Missouri Board of Chiropractic Examiners requests a formal opinion as to the Board's authority to not renew a license to practice chiropractic for non-compliance with the two-day educational requirement and/or non-payment of the \$10 annual renewal fee."

In regard to the above, subsection 2 of Section 331.050, RSMo 1969, reads as follows:

"2. All persons once licensed to practice chiropractic in this state shall pay on or before June thirtieth of each year after a license is issued to them as provided by law, to the state board of chiropractic examiners, an annual renewal license fee of ten dollars and shall furnish to the board

Dr. James A. Mertz, D.C.

satisfactory evidence that he has attended a two-day educational program as approved by the board, and no person shall practice chiropractic after July first of each year following the issuance or last renewal of the license without a renewal. . . ."

In Letter Opinion No. 125, rendered to Honorable F. L. Brenton on March 10, 1970 (copy enclosed), it was held that subsection 2 of Section 331.050, as set forth in House Bill 85 requiring a chiropractor to pay to the State Board of Chiropractic Examiners an annual license fee of ten dollars and furnish to the Board satisfactory evidence that an individual had attended a two-day educational program as approved by the Board, in order to obtain a renewal of his license, was not unconstitutional.

It is our understanding that the opinion request results from the recent case of State ex rel. American Institute of Marketing Systems, Inc., et al. v. Missouri Real Estate Commission, 461 S.W.2d 902 (K.C. Mo.App. 1970). This was a proceeding in prohibition by relator, American Institute of Marketing Systems, Inc., to prohibit the respondent, Missouri Real Estate Commission from continuing with hearings concerning the relators right to renewal of their respective real estate licenses. The prime contention of relators was that respondent no longer had legal authority to hold such a hearing since the enactment of the "Administrative Hearing Commission Act" in 1965. Section 339.060, RSMo 1969 provided that annual real estate licenses would expire on the thirtieth day of June each year and require fees for renewal thereof. As to the requirements of renewal, it was specified:

". . . In the absence of any reason or condition which might warrant the refusal of the granting of a license, the commission shall issue a new license for each ensuing year upon receipt of the written application of the applicant and the renewal fee herein required."

Subsection 1 of Section 339.080, RSMo 1969 also provided:

"The commission may deny an application for a license, or suspend or revoke a license issued, only after a hearing, . . ."

The respondent Commission therefore argued that the renewal of a license was equated with the original issuance of a

Dr. James A. Mertz, D.C.

license and that Section 339.080, RSMo 1969, required it to hold a hearing before it could deny an application for renewal.

The Kansas City Court of Appeals held that the Missouri Real Estate Commission was without statutory authority to conduct an evidentiary hearing into the qualifications of realtors for renewal of their licenses; that it must act on the application for renewal which could contain such pertinent information as the commission deemed fit to require. If the Real Estate Commission thought there was reason to suspend or revoke a license, it must file its complaint with the Administrative Hearing Commission and could take disciplinary action only after a hearing and findings of fact and conclusions of law by the Administrative Hearing Commission. However, it is important to note the language of the court on page 906 of its opinion which reads as follows:

"Furthermore, Section 339.060 requires renewal by the real estate commission 'in the absence of any reason or condition which might warrant the refusal of the granting of a license.' When read in context, this obviously refers to established reasons or conditions such as prior disciplinary action which is still in effect or conviction coming within the purview of Section 339.110. This section 339.060 refers to 'the absence of any reason or condition.' It does not refer to the absence of any allegations or complaints, which, if found to be true, 'might warrant the refusal of the granting of a license.' The situation in the present case comes within the latter category. We do not have established reasons or conditions, we have only allegations. Under such circumstances, said Section 339.060 requires that the commission renew the license. If there are allegations or complaints which justify disciplinary action against the licensees, the real estate commission may file a complaint with the administrative hearing commission as provided in Section 161.282, and that commission will hold a hearing, make findings of fact and conclusions of law, and if it finds that the allegations are sustained by the evidence, the real estate commission may then determine the disciplinary action to be imposed. . . ."

Dr. James A. Mertz, D.C.

As a result of the above, it is our view that the State Board of Chiropractic Examiners has the authority to not renew a license to practice chiropractic for non-compliance with the two-day educational requirement or non-payment of the ten dollar annual renewal fee as required by subsection 2 of Section 331.050, RSMo 1969. However, if there are other allegations or complaints which justify disciplinary action against a licensee, the State Board of Chiropractic Examiners must file a complaint with the Administrative Hearing Commission as provided in Section 161.282, RSMo 1969.

CONCLUSION

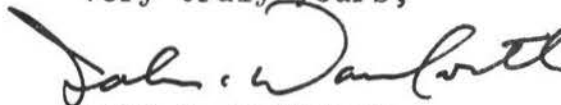
The opinion of this office is as follows:

1. The State Board of Chiropractic Examiners has the authority not to renew a license to practice chiropractic for non-compliance with the two-day educational requirement or non-payment of the ten dollar annual renewal fee as required by subsection 2 of Section 331.050, RSMo 1969.

2. If there are other allegations or complaints which justify disciplinary action against a licensee, the State Board of Chiropractic Examiners must file a complaint with the Administrative Hearing Commission as provided in Section 161.282, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, B. J. Jones.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosure:

Letter Op. No. 125
3-10-70, Brenton