

STATE BOARD OF OPTOMETRY: Without authority to limit the statutory qualification-period of registered apprentice to five years by regulation.

November 8, 1946



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Dr. J. R. Bockhorst, Secretary
Missouri State Board of Optometry
4032A W. Florissant Avenue
St. Louis 7, Missouri

Dear Sir:

We hereby acknowledge receipt of your recent request for an opinion, which reads as follows:

"The State Board of Optometry will greatly appreciate your office giving the Board an opinion in connection with the following matter:

"Pursuant to Section 10115 of the Revised Statutes of Missouri, 1939, a person 'who has studied for three years as a registered apprentice under an optometrist registered under the laws of this state' and who possesses the other prescribed qualifications, may be examined by the State Board 'to determine his fitness to receive a Certificate of Registration as a Registered Optometrist.' In 1943, the Missouri General Assembly amended Section 10115 so that it now provides that said 'three years of study as a registered apprentice shall have been started prior to October 1, 1943,' (see Laws of Missouri, 1943, Pages 973 to 976). The intention of the Legislature in so amending the Optometric Law was to prevent the possibility of a person's becoming a Registered Optometrist by serving as an apprentice, it being the feeling of the

Legislature and of the State Board of Optometry that all persons practicing Optometry today should have formal schooling in optometry.

"In order to further put into effect the intention of the Legislature, as expressed in the Optometry Law, the State Board of Optometry would like to issue a ruling so as to compel the men who are presently serving as apprentices to either become Optometrists or to stop practicing as apprentices. The Board believes that it has the power by virtue of Section 10125 which reads as follows:

"The State Board of Optometry may adopt reasonable rules and regulations relating to the enforcement of the provisions of this Chapter."

"The rule which the State Board of Optometry would like to adopt would read as follows:

"Pursuant to Missouri Law, a registered apprentice who has studied under an Optometrist for three years and who possesses certain other prescribed qualifications may be examined by the State Board to determine his fitness to receive a Certificate of Registration as a Registered Optometrist. Every registered apprentice shall, at the end of five years of such study, be examined by the State Board of Optometry to determine his fitness to receive a Certificate of Registration as a Registered Optometrist. If the registered apprentice fails in such examination, he may apply for another examination within one year of the original application date. Failure at the second examination or failure to apply for either examination at the time required by this rule shall constitute grounds for the State Board's

refusal to renew the applicant's Certificate as a registered apprentice.'

"Will your office please be so kind as to give our Board an opinion as to whether or not the State Board may promulgate such a rule and as to its validity."

Your request makes reference to Section 10115, Laws of Missouri, 1943, page 973, and that section in its entirety provides:

"A person is qualified to receive a certificate of registration as a registered optometrist:

"(a). Who is at least 21 years of age.

"(b). Who is of good moral character and temperate habits.

"(c). Who has graduated from a high school or secondary school approved by the state board of optometry or who has completed an equivalent course of study as determined by an examination conducted by the state board of optometry.

"(d). Who has graduated from a school of optometry approved by the state board of optometry or who has studied for three years as a registered apprentice under an optometrist registered under the laws of this state provided that said three years of study as a registered apprentice shall have been started prior to October 1, 1943.

"(e). Who has passed a satisfactory examination conducted by the state board of optometry to determine his fitness to receive a certificate of registration as a registered optometrist."

It is under this section that the proposed rule is to be adopted and the provisions of this section are definite

enough to require no interpolation. Any person who is qualified under this section is entitled to receive a certificate of registration as a registered optometrist. The Missouri State Board of Optometry proposes, by regulation, to limit the period of time that a registered apprentice-optometrist may continue in that status. We must, therefore, determine whether or not that board has authority to increase this period of time.

59 C. J., page 112, Section 119, states:

"Powers granted to state administrative agencies must be exercised in a just and reasonable manner, and in conformity with the statutory or constitutional source of the power conferred."

In support of this statement several cases are cited. In the case of Kaw Valley Drainage Dist. v. Missouri Pac. Ry. Co., 99 Kans. 188, 161 Pac. 937, l. c. 945, it is held:

"* * * when the state creates an agency to serve its public needs and confers administrative powers upon it, whatever be the language of the statutes conferring such powers, a just and reasonable exercise of such powers is intended, and the power to make or exercise unreasonable, arbitrary, and confiscatory orders is not intended. Such is the spirit of our own Bill of Rights and of the Fourteenth Amendment which have been expounded times without number by this court and by the federal Supreme Court."

In the case of State ex rel. Woolridge v. Morehead, 100 Neb. 864, 161 N. W. 569, LRA 1917D, 310, the Supreme Court of Nebraska, in discussing a state banking board, stated in 161 N. W., l. c. 572, as follows:

"The powers of the board not granted by the statute are withheld. Morrill v. Jones, 106 U. S. 466, 1 Sup. Ct. 423, 27 L. Ed. 267; Scribner State Bank v. Ransom, 35 S. D. 244, 151 N. W. 1023; State v. Cook, 174 Mo. 100, 73 S. W. 489."

The rule is well stated in the case of *Huffman v. State Roads Commission*, 137 Atl. 358 (Md.), l. c. 366, as follows:

"* * * It is generally recognized, however, that, while such agencies are governmental, they have no powers, but such as are expressly delegated to them by the organic or statutory law of the government of which they are a part, or such as are by implication essential to the full and adequate exercise of such express powers."

The following cases are in accord with the last stated rule: *City of Newark v. Civil Service Commission*, 177 Atl. 868, 115 N. J. L. 26; *State v. Erickson*, 244 Pac. 287, 75 Mont. 429; *State ex rel. Collins v. Holladay*, 252 N. W. 733, 62 S. D. 256.

Section 10115, Laws of Missouri, 1943, page 973, provides for a three-year period of study for a registered apprentice-optometrist. The Missouri State Board of Optometry proposes to place a maximum period of time for which a registered apprentice-optometrist may continue his study, which, under the rules set out herein, is not within its authority.

Conclusion

It is, therefore, the opinion of this department that, since Section 10115, Laws of Missouri, 1943, page 973, sets forth the qualifications that a person must have to receive a certificate of registration as a registered optometrist, the State Board of Optometry is without authority to limit the qualification-period of study of a registered apprentice under a registered optometrist, to five years, by adoption of a regulation to that effect.

Respectfully submitted,

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APPROVED:

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