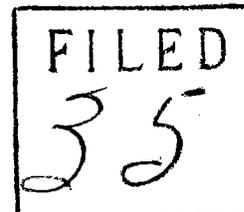


BARBERS: Applicant for renewal of certificate of registration must pass examination if certificate is not renewed within two years, though part of time was spent in military service.

April 24, 1946



Mr. J. C. Green, Secretary  
State Board of Barber Examiners  
St. Louis 2, Missouri  
Box 253  
Doniphan, Missouri

Dear Sir:

This department acknowledges receipt of your request for an official opinion, reading as follows:

"Section 10132 of the Revised Statutes of Missouri, 1939, among other things provides as follows: 'Any person failing to renew his certificate of registration for barbers license not exceeding two years may reinstate said certificate of registration upon the payment of \$2.00 for each delinquent year in addition to the \$5.00 reinstatement fee prescribed herein but any barber failing to renew his certificate of registration for a period exceeding two years and desiring to be re-registered as a barber in this state will be required to appear before said board and pass a satisfactory examination as to his qualifications, etc.'

"We have an applicant for a barbers license who held a license until a few months before he entered the United States Army in World War II and he let a period of time of more than two years expire before making application to be reinstated; however excluding the time that he was in service, the time was much less than two years.

"Our question is in computing the two years time of limitation in which he must renew his certificate in order to avoid appearing

before the board, for an examination, must the time spent in service be included or can it be excluded."

The principal question contained in your request is, should the time spent in the military service by a person applying for a renewal of his registration certificate be considered in determining whether such person has failed to renew his certificate of registration for a period exceeding two years.

Section 10132, R. S. Mo. 1939, states the time that barbers must apply for renewal of certificates of registration and provides as follows:

"Every person now engaged in the occupation of barbering in this state shall, within ninety days after the approval of this law, file with the secretary of said board a written statement, setting forth his name, residence and the length of time during which and the place where he has practiced such occupation, and shall pay to the treasurer of said board \$2.00; and a certificate of registration entitling him to practice the said occupation for the fiscal year ending January 31, 1922, thereupon shall be issued to him, and the holders of such certificates shall, annually, on or before the expiration of their respective certificates, make application for the renewal of same, stating the number of his expiring certificate, and shall in each case pay to the treasurer of said board the sum of \$2.00 therefor. For any and every license or certificate given or issued by the board a fee of \$2.00 shall be paid by the person receiving the same. Should any person holding a certificate of registration as a barber fail to make application for renewal of same within the time prescribed herein, such person shall be required to pay the sum of \$5.00 to the treasurer of said board, in addition to the regular registration fee provided for herein. Any person failing to renew his certificate of registration for a period not exceeding two years may reinstate said certificate of registration upon the payment of \$2.00 for each delinquent

year in addition to the \$5.00 reinstatement fee prescribed herein, but, any barber failing to renew his certificate of registration for a period exceeding two years and desiring to be re-registered as a barber in this state will be required to appear before said board and pass a satisfactory examination as to his qualifications to practice said occupation and shall pay to the treasurer of said board the regular examination fee as is prescribed in the following section."

(Emphasis ours.)

Counting the time that the applicant was in the service, a period of more than two years has expired since the last time that such applicant applied for renewal of his certificate of registration. Therefore, according to Section 10132, supra, he must pass a satisfactory examination before he can be re-registered, unless the board is empowered to omit the period of time spent in the military service and conclude that it has been less than two years since the last time the applicant registered.

It is a well established principle of law that a board, bureau or commission, which is created by statute, has only such powers conferred by the statute. In this connection we cite the case of Federal Trades Commission v. Raladam Co., 283 U.S. 643, 75 L. Ed. 1324, 51 S. Ct. 587, 79 A.L.R. 1191, in which respondent was charged by the Federal Trades Commission with using unfair methods of competition. Justice Sutherland, of the United States Supreme Court, in defining the limitation on official powers, said the following at A.L.R. 1. c. 1197:

"\* \* \* Official powers cannot be extended beyond the terms and necessary implications of the grant. If broader powers be desirable they must be conferred by Congress. They cannot be merely assumed by administrative officers; nor can they be created by the courts in the proper exercise of their judicial functions."

The principle of law stated in the Raladam case, supra, would also apply to the exercise of official powers by state officers.

In Fort Worth Cavalry Club v. Sheppard, 125 Texas 339, 83 S.W. (2d) 660, there was a proceeding in mandamus to compel the Comp-

troller to issue a state warrant for a certain sum of money. The court, in defining the powers and duties of public officers, said at S.W. 1. c. 663:

"All public offices and officers are creatures of law. The powers and duties of public officers are defined and limited by law. By being defined and limited by law, we mean the act of a public officer must be expressly authorized by law, or implied therefrom. \* \* \* \* \*"

The board of examiners is provided by statute in Section 10128, R. S. Mo. 1939, reading as follows:

"A board of examiners, to consist of three persons, citizens of this state for at least five years prior to their appointment, is hereby created to carry out the purposes and to enforce the provisions of this chapter. Such board shall be appointed by the Governor, by and with the advice and consent of the senate: Provided, that all members must have been registered and practicing barbers in this state the last five years next preceding their initial appointment. Each member of said board shall serve for a term of four years and until his successor is appointed and qualified. Said board shall, with the approval of the State Board of Health, prescribe such sanitary rules as it may deem necessary, with particular reference to the precautions necessary to be employed to prevent the creating and spreading of infectious or contagious diseases. A copy of such rules shall be posted in a conspicuous place in every barber shop, barber school or barber college in this state. Each barber to whom a certificate of registration is issued must be examined at least once a year and as often thereafter as the board may deem necessary, by a licensed physician duly designated by the state board of health to make such examinations, to ascertain the fact that such barber is free from infectious or contagious diseases, and is not afflicted with any physical or mental ailment which would render him unfit to practice the occupation of barbering. Each member of

said board shall, before entering upon the discharge of his duties, give a bond in the sum of fifteen thousand dollars, with a duly authorized surety or bonding company, to be approved and filed by the Secretary of State, conditioned for the faithful performance of his duties, and shall take oath provided by law for public officers. Vacancies upon said board caused by death, resignation or expiration shall be filled by appointment by the Governor."

The members of said board are public officers and can only act with the power and authority conferred by statute.

In certain instances the General Assembly has passed amendments permitting persons to obtain certificates of registration without being penalized where they have not procured the certificates within the prescribed time due to being in the military service.

For example, Section 16, Laws of Missouri 1941, page 663, empowered the State Board of Registration for Architects and Professional Engineers to issue a certificate of registration to those persons who applied within one year after the act became effective, who paid a fee of \$25.00, and who had certain stipulated qualifications, and such persons were not required to take an oral or written examination.

The 62nd General Assembly passed an act to amend Section 16, supra, which was approved August 2, 1943, and added the following provision:

"\* \* \* Provided, however, that any architect or professional engineer who has been prevented from obtaining such certificate of registration within the period of one year after the effective date of this Act, because of service with the Armed Forces during such period, shall have one year after the official termination of the war to obtain such certificate without oral or written examination."

In the instant case the Legislature has passed no legislation similar to that just cited that would give the Board of Examiners the power to issue a renewal certificate of registra-

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tion where the applicant has not applied for the certificate within the statutory time because of being in the military service.

We readily recognize the hardship imposed on the applicant in the absence of such legislation, but, under the facts and circumstances presented, such applicant cannot be issued a renewal certificate of registration without first passing a satisfactory examination.

Conclusion

It is, therefore, the opinion of this department that a person, who has failed to procure a renewal of his certificate of registration as a barber for a period exceeding two years, must pass a satisfactory examination before he can be re-registered. This is required by Section 10132, R. S. No. 1030, and the time spent in the military service must be counted in determining if the period exceeds two years.

Respectfully submitted,

RICHARD F. THOMPSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

RFT:CP