

wise the quit-claim deed recently executed by Benjamin F. Hughes, above referred to.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1680.

APPROVAL, BONDS OF STARK COUNTY—\$60,000.00.

COLUMBUS, OHIO, March 27, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

1681.

DENTISTRY PRACTICE—OWNER, EMPLOYING DENTIST TO DO ALL DENTAL WORK, REQUIRED TO BE LICENSED—USE OF TRADE NAME NOT PRACTICING UNDER FALSE NAME—SPECIFIC CASE.

**SYLLABUS:**

1. *When a person who owns a dental office employs a registered dentist, pays all bills, signs all advertisements and conducts the office generally, such person is practicing dentistry within the meaning of Section 1329, General Code, and should be licensed as required by Section 1320, General Code.*
2. *The use of the name "The Jones Dentists" by a licensed dentist does not, under authority of the case of Ex Parte Craycroft, 24 N. P. (N. S.) 513, constitute practicing dentistry under a false name.*
3. *The use of a sign on a dental office reading "Dr. Jones, Dentist" by other than a licensed dentist of that name is in violation of Section 12713, General Code, prohibiting the practice of dentistry under a false name.*

COLUMBUS, OHIO, March 27, 1930.

HON. RAY R. SMITH, *Secretary, Ohio State Dental Board, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"One, Dr. Jones, a licensed and registered dentist in the State of Ohio owns and operates a dental office. He employs one licensed and registered dentist to assist him. Dr Jones dies and leaves the office, equipment and practice to his wife. She, Mrs. Jones, who is not licensed or registered to practice dentistry re-employs the assistant, pays all bills, signs all advertisements, and conducts the business generally. She advertises under the name of 'The Jones Dentists' and across the front of the building are the names DR. JONES, DENTIST in two painted signs.

The questions involved are, first, *Is it within the statutes of the State*

*of Ohio and thereby legal for Mrs. Jones to own and operate said office, and secondly, Is it within the statutes for the office to advertise under the deceased name?"*

Section 1320, General Code, provides:

"Unless previously qualified as provided by law, no person shall practice dentistry in this state until he has obtained a license from the state dental board as hereinafter provided."

Section 1329, General Code, defines the practice of dentistry. It is as follows:

"A person shall be regarded as practicing dentistry who is a manager, proprietor, operator or conductor of a place for performing dental operation or who, for a fee, salary or other reward paid or to be paid either to himself or to another person, performs, or advertises to perform, dental operations of any kind, treats diseases or lesions of human teeth or jaws, or who uses the word 'dentist,' 'dental surgeon,' the letters 'D. D. S.,' or other letters or title in connection with his name, which in any way represents him as being engaged in the practice of dentistry."

From the statement of facts presented in your letter, it is apparent that Mrs. Jones is the proprietor of the dental office in question and is managing, operating and conducting such offices within the meaning of Section 1329, supra.

In specific answer to your first question, therefore, I am of the opinion that when a person who owns a dental office employs a registered dentist, pays all bills, signs all advertisements and conducts the office generally, such person is practicing dentistry within the meaning of Section 1329, General Code, and should be licensed as required by Section 1320, General Code.

The next question presented in your letter relates to advertising a name of a dental office. There is no question but that a person who is not a licensed dentist may not, under the provisions of Section 1329, supra, advertise to perform dental operations of any kind regardless of the name used. But when a licensed dentist advertises under the name of "The Jones Dentists", a more difficult question is presented. Section 1329-1 General Code, prohibits the practice of dentistry under any other name than the name of the practitioner, and Section 12713, General Code, provides a penalty for practicing dentistry "under a false name". In the case of *Ex Parte Craycroft*, 24 N. P. (N. S.) 513, it was held that advertising under such names as "The New York Dental Parlors", "Albany Dentists", "Philadelphia Painless Dentists", was not in violation of the laws of Ohio, since Section 1329-1, General Code, insofar as it prohibits the practice of dentistry under any other name than the name of the practitioner is unconstitutional. In the opinion of the court, it was held that a distinction should be drawn between names which could be construed as belonging to the category of common names and which could not be so construed. The court commented upon the provisions of Section 12713, and said at p. 523, 524:

"The evident purpose of the Legislature, to which exception is taken by counsel for the applicant, seems to be fully expressed, to-wit, that no one shall be permitted to practice the profession of dentistry in the State of Ohio unless he be a licensed dentist and he can not assume the title of 'dentist' unless he has such license conferred upon him by the proper author-

ities of the State. The effect of this statute is also a prohibition against anyone practicing dentistry under a false or assumed name, for instance, a graduate of a dental college, holding a license from the state, and whose name, for example is John Smith, will not be permitted under this section to advertise himself as William Brown. This does not prohibit John Smith from advertising his dental office as 'New York Dental Parlors' or 'Albany Dentists.'

The court is of the opinion that in that respect Judge Dillon's construction of the law in *Rose vs. Baxter et al.*, 7 N. P. ( N. S.), 132, decided May 16, 1908, is sound reasoning. In that case a doctor under the name of Dr. Justin, and at the same time maintained another office under the name of Dr. Rose. In that case the court held that under the circumstances of that case the doctor intended thereby to perpetuate a fraud upon the public, constituting gross immorality.

The same reasoning would apply in case a dentist would attempt to practice dentistry under two different names. The court does not believe that an advertisement by a dentist referring to his place of business as 'Philadelphia Painless Dentists,' or 'New York Dental Parlors' is contrary to the spirit of the section here referred to. It would appear that the Legislature intended that no dentist should practice under a false name; so that, in the case at bar, if the term 'Philadelphia Painless Dentists' could be construed as belonging to the category of common names, such as John Smith, Herbert Brown, Robert Watson, etc., and that Dr. Craycroft intended thereby to convey to the public that his name, instead of being Robert C. Craycroft, was 'Philadelphia Painless Dentists,' the provisions of Section 12713 would apply, but it would be going too far to charge that Dr. Robert C. Craycroft, by advertising his profession under the name of 'Philadelphia Painless Dentists' practiced dentistry under a false name. The testimony showed that he had his diploma from the dental college of which he was a graduate, which contained his name—Robert C. Craycroft—hung in his dental offices, did business as Robert C. Craycroft, was known as such in the community, and did not conceal his personal identity in any manner. The fact that he used his well known description 'Philadelphia Painless Dentists' is not such a violation of the law as contemplated by the Legislature when Section 12713 was enacted."

This case has not been overruled by any Court of Appeals or the Ohio Supreme Court, and I am aware of no subsequent decisions of the Ohio courts which in effect may be said to alter the principles therein laid down. The court recognized that certain property rights attach to trade names and said at p. 522:

"A provision of the statute requiring that the name of the dentist should appear in readable letters in connection with the 'advertising name' might be considered a salutary provision of the statute to protect the public against fraud and imposition. But we are not called upon to decide this particular question in the case at bar as Section 1329-1 contains no such qualification. Section 1329-1 virtually prohibits any dentist from practicing dental surgery under any other name except his own. If this was held to be a proper exercise of police power, all of the 'good will' attached to such names as 'New York Dental Parlors,' 'Albany Dentists,' etc., would be wiped out; the property rights in these names would be *nil.* and an irreparable loss would be suffered by those who for years have used these names and built up a large and legitimate practice under these designations."

Applying the reasoning of the court to your specific question, it is evident that an advertisement under the name of "The Jones Dentists" is not necessarily an advertisement of a name such as could be construed as belonging to the category of common names. The question is not entirely free from doubt, since "Jones" standing alone does, of course, belong to the category of common names. However, the use of the word "the" in the name is, I believe, sufficient notice that the name is used as a trade name. Upon the statement of facts presented in your letter, it is possible that a court may upon consideration thereof be justified in finding in this specific instance that the use of the name "The Jones Dentists" is violative of Section 12713. But to answer the question categorically, applying the necessary rule of strict construction of penal statutes, I am of the opinion that, under authority of the Craycroft case, it is not prohibited.

In your letter, you mention the fact that across the front of the building wherein the dental offices in question are located appears the name "Dr. Jones, Dentist". Section 12713 provides that "Whoever practices dentistry under a false name \* \* \* shall be fined \* \* \*." Under authority of the Craycroft case, supra, I am of the opinion that the use of the sign "Dr. Jones, Dentist" under the statement of facts submitted in your letter, is violative of Section 12713, General Code.

Summarizing, it is my opinion that:

1. When a person who owns a dental office employs a registered dentist, pays all bills, signs all advertisements and conducts the office generally, such person is practicing dentistry within the meaning of Section 1329, General Code, and should be licensed as required by Section 1320, General Code.

2. The use of the name "The Jones Dentists" by a licensed dentist does not, under authority of the case of *Ex Parte Craycroft*, 24 N. P. (N. S.) 513, constitute practicing dentistry under a false name.

3. The use of a sign on a dental office reading "Dr. Jones, Dentist" by other than a licensed dentist of that name is in violation of Section 12713, General Code, prohibiting the practice of dentistry under a false name.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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1682.

APPROVAL, ABSTRACT OF TITLE TO LOT OWNED BY ETTA DEMPSEY, IN CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, March 27, 1930.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval an abstract of title, warranty deed form, encumbrance estimate No. 247 and controlling board certificate relating to the proposed purchase by the State of Ohio of the following described lot and premises in the city of Columbus, Franklin County, Ohio, the same being more particularly described as Lot No. 15 in R. P. Woodruff's Subdivision of the south half of the south half of Lot No. 278 in R. P. Woodruff's Agricultural College Addition to said city as the same is numbered and delineated upon the recorded plat thereof, of record in plat book 3, page 421, Recorder's Office, Franklin County, Ohio.