

1873.

COSMETOLOGY, BOARD OF — FEES COLLECTED UNDER SECTION 1082-22 G. C. REQUIRED TO BE PAID INTO STATE TREASURY — REFUNDED BY SPECIFIC APPROPRIATION OF GENERAL ASSEMBLY — WHERE LICENSED COSMETOLOGIST OR MANICURIST RETIRED FROM PRACTICE MORE THAN THREE YEARS—UPON EXAMINATION, LICENSE MAY BE RESTORED — NO LAPSED RENEWAL FEE REQUIRED — EXAMINATION REQUIREMENTS.

SYLLABUS:

1. *All fees collected by the Board of Cosmetology are, under the provisions of Section 1082-22, General Code, required to be paid into the state treasury after such payment may not be refunded without a specific appropriation by the General Assembly.*

2. *A licensed cosmetologist or manicurist who has retired from the*

*practice for more than three years may have his or her license restored upon examination without the payment of any lapsed renewal fee.*

3. *Such licensed cosmetologist or manicurist so applying for a restoration of license may be admitted to his or her second examination without the payment of a fee and shall pay for a third or subsequent examination a fee of \$3.00.*

Columbus, Ohio, February 19, 1940.

Mr. Howard L. Shearer, Secretary, State Board of Cosmetology,  
21 W. Broad Street, Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion as follows:

“This Department desires your opinion as to our authority to refund lapsed fees paid by licensees under Section 1082-13 reading in part as follows:

‘Any licensed cosmetologist or manicurist who retires from practice may have his or her license restored only upon payment of all lapsed renewal fees; provided, however, that no cosmetologist or manicurist who has retired from practice for more than three years, may have his or her license restored, without examination.’

The Department is confronted with this question in three phases; first, where the licensee has paid one or more lapsed fees and within possibly one or two months requests the return of such fees, the second, where the licensee has paid three or more lapsed fees and are, under the paragraph quoted above, required to take the State Board Examination, which requires an additional fee of \$5.00. Then, after the Examination, and failing to pass, request the return of the lapsed fees on the theory that no value or service was received by the licensee through such a payment, it being agreed that the Examination fee is not refundable.

The third phase is analogous to the second, except where the licensee has paid the fee under written protest. Your opinion on the three phases of this question will enable the Department to properly dispose of several such claims.”

In answer to your first question, your attention is directed to Section 1082-22, General Code, which reads as follows:

“All fees collected on behalf of the board of cosmetology, and all receipts of money shall be reported at the beginning of each week, for the week preceding, to the state auditor, and at the same time the entire amount of such collection shall be paid into the state

treasury, and shall be credited to a fund to be known as the board of cosmetology's rotary fund, which fund is hereby created. Such rotary fund shall be for the board of cosmetology, only, and out of it shall be paid upon the warrant of the state auditor, salaries and all other expenses necessarily incurred in carrying into effect the provisions of this act. Provided, however, that any money in excess of such operating expenses shall be credited to the general revenue fund of the state."

By virtue of the above section, all fees collected on behalf of the Board of Cosmetology are required to be paid into the state treasury each week.

Article II, Section 22, of the Constitution of the State of Ohio, provides in part:

"No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law."

Since such fees are paid into the state treasury, it is obvious that there can be no refunds except by specific appropriation by the Legislature.

Pertinent to your second and third inquiries, are the provisions of Section 1082-13, General Code, which section reads in part as follows:

"Any licensed cosmetologist or manicurist who retires from practice may have his or her license restored only upon payment of all lapsed renewal fees; provided, however, that no cosmetologist or manicurist who has retired from practice for more than three years, may have his or her license restored, without examination."

A reading of the above language raises the question of whether or not all licensed cosmetologists or manicurists who have retired from practice, regardless of the length of time of such retirement, are required, in order to have their license restored, to pay all lapsed renewal fees and whether in addition thereto those licensees who have retired from practice for more than three years are required to submit to an examination.

It will be noted that while the above language contains a provision that any licensed cosmetologist or manicurist who retires from practice must pay all lapsed renewal fees before having his or her license restored, nevertheless, a proviso has been appended to such provision to the effect that if such retirement from the practice has been for more than three years, an examination must be taken.

With respect to provisos contained in statutes, it is stated in 37 O. J. at pages 784 and 785:

“A proviso is generally used in a statute to qualify, limit, or restrain the operation of general terms contained in a previous part of the section or act, or to except or exempt certain specified acts or persons from the operation of the general provisions of the statute.”

Further discussion of the construction of a proviso is found in Black on Interpretation of Laws, Second Edition, at pages 430, wherein it is stated:

“The proper office of a proviso is to limit or restrict the preceding section or part of a statute, not to expand or enlarge it to introduce new provisions.”

By the application of the above rules of statutory construction it would appear that the Legislature, when it embodied in the statute the language pertaining to licensees retired for more than three years in the form of a proviso, intended to restrict the operation of the preceding language in the statute to those licensees whose retirement was for three years or less. In other words, the language employed by that body is set out in such a manner so as to impel the conclusion that it intended to divide those licensees who were retired from practice into two classes, each class to meet different requirements for reinstatement.

The first class, of course, consists of those previously licensed practitioners who have retired from practice for three years or less, while the second class comprises those who have retired for more than three years and it would appear that the license of any person in the first class may be restored upon the payment of all lapsed renewal fees while a person in the latter class would merely be required to take and pass an examination in order to be restored to practice.

If the Legislature had intended that a person previously licensed who had retired from practice for more than three years would, in addition to the taking and passing of an examination, be required to pay all lapsed renewal fees, such body might well have so declared by stating that “in addition to the payment of all lapsed renewal fees, any licensed cosmetologist or manicurist who has retired from practice for more than three years shall pass an examination.” The reason for not so providing would appear to be obvious. Such provision would require a previously licensed practitioner, if he or she, after a retirement of more than three years, desired to again become licensed, to pay a greater fee to secure a license than a person applying for the first time.

In connection therewith, your attention is directed to an opinion rendered by the then Attorney General on January 6, 1939 (1938 O. A. G., p. 2459), wherein it was stated:

“Licensees who have retired from the practice of cosmetology for a period of more than three years are not, under the provisions of Section 1082-13 of the General Code, entitled to take an examination for the restoration of their respective licenses unless such applicants are able to meet the age and educational requirements imposed by Section 1082-5 of the General Code.”

Clearly if a licensee who has retired from the practice for more than three years is required to meet all the requirements imposed upon a person who applies for admission to the examination for the first time, there would certainly be no logic in exacting an additional fee for taking such examination merely because such applicant had been previously licensed.

It is elementary that statutes will not be so interpreted as to result in ridiculous and absurd consequences if a fair interpretation of such statutes will bear a reasonable construction. It is stated in Lewis' Sutherland Statutory Construction, Second Edition, Vol. II at page 913:

“When the literal enforcement of a statute would result in great inconvenience and cause great injustice and lead to consequences which are absurd and which the Legislature could not have contemplated, the courts are bound to presume that such consequences were not intended and adopt a construction which will promote the ends of justice and avoid the absurdity.”

I am constrained to the view, therefore, that any licensee who has retired from the practice for more than three years may have his or her license restored upon examination, without the payment of lapsed renewal fees.

While you do not inquire relative to the examination fee, I deem it advisable to consider this point for the reason that you state in your communication “where the licensee has paid three or more lapsed fees and are \* \* \* required to take the State Board Examination, which requires an additional fee of \$5.00.”

Section 1082-12, General Code, which deals with the question of fees, reads as follows:

“The fee for a license as a managing cosmetologist shall be five dollars (\$5.00).

Each applicant for a license, and/or for examination for de-

termining his or her fitness to practice cosmetology as an operator, shall pay to the board a fee of five dollars, and for each re-examination (other than a second examination, for which no fee shall be required), a fee of three (\$3.00) dollars.

The fee for examination and/or license as the case may be, as a manicurist shall be five (\$5.00) dollars and for each re-examination (other than a second examination for which no fee shall be required), a fee of three (\$3.00) dollars.

Each applicant referred to in this section shall, in addition to the fees herein specified, furnish his or her own models."

From the above it will be noted that for an original examination a fee of \$5.00 shall be paid, for a second examination no fee shall be required and for a third or subsequent examination a fee of \$3.00 shall be paid.

In view of this clear and unmistakable language it is at once apparent that a person who has taken but one examination and after being licensed has retired from practice for more than three years may thereafter be admitted to a second examination without the payment of a fee and to any examination subsequent to the second upon the payment of a fee of \$3.00.

Therefore, in specific answer to you questions, I am of the opinion that: (1) All fees collected by the Board of Cosmetology are, under the provisions of Section 1082-22, General Code, required to be paid into the state treasury and after such payment may not be refunded without a specific appropriation by the General Assembly; (2) A licensed cosmetologist or manicurist who has retired from the practice for more than three years may have his or her license restored upon examination without the payment of any lapsed renewal fee; (3) Such licensed cosmetologist or manicurist so applying for a restoration of license may be admitted to his or her second examination without the payment of a fee and shall pay for a third or subsequent examination a fee of \$3.00.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.