

1593.

STATE BOARD OF EMBALMING EXAMINERS—MAY REQUIRE CERTIFICATES OF GRADUATION FROM 8th GRADE OF SCHOOL OR ITS EQUIVALENT OF APPLICANTS FOR EMBALMER'S LICENSE—WHEN EMBALMER CONVICTED OF FELONY—MAY REVOKE EMBALMER'S LICENSE.

1. *The State Board of Embalming Examiners may require the presentation of certificates of graduation from the 8th grade of school or its equivalent, of applicants for embalmer's license.*

2. *The State Board of Embalming Examiners have power to revoke an embalmer's license when such embalmer has been convicted of a felony subsequent to the date of the license.*

COLUMBUS, OHIO, September 27, 1920.

HON. B. G. JONES, *Secretary The State Board of Embalming Examiners, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department as follows:

“Can the state board of embalming examiners require the presentation of a certificate of graduation from the eighth grade or its equivalent of applicants for embalmers' licenses. For your information I beg to state that we have had a great many complaints from different members of our profession throughout the state, stating that quite a number of applicants for embalmers' licenses are falsely certifying to the fact that they have had the required common school education.

Has this board the right, after due notice and fair trial of a licensed embalmer, who has been convicted of receiving money for the burial of a dead human body without so doing in the municipal court, and fined thereby, to revoke his embalmer's license?”

Your first inquiry relates to the power of your board to require a certificate of graduation from the eighth grade of school, or its equivalent, before admission to the examination for embalmer's license.

Section 1335 et seq., as amended in 107 O. L., 654, are pertinent.

Section 1338 in part provides that your board shall “from time to time, make and adopt rules, regulations and by-laws, for its government not inconsistent with the laws of this state and the United States.”

Section 1342 provides that persons desiring to engage in the practice of embalming, shall make a written application, stating, among other things, “his age and general education, which shall be such as to entitle him or her to admittance to high school. If the said board shall find the facts set forth in the application to be true, the said board shall issue to said applicant a certificate of registration.”

This section also provides that the applicant shall give “such information as the board may, by regulation, require for registration,” and in the last sentence of the section the idea of discretion on the part of your board is clearly expressed, as it says that “if after the state board of embalming examiners *are satisfied* that the applicant has qualified, as set forth in this section,” the board shall admit him to the examination.

It is also noted that you state that considerable complaint has been made that applicants for licenses in the past have falsely certified to their general education.

In view of the powers given to your board, as above indicated, and the duties

imposed upon it, it would seem clear that it is in the power of your board to require certification of the attendance at or graduation from the school referred to in your letter.

Your second question relates to the power of your board with reference to the revocation of embalmers' licenses.

Section 1343-2 is as follows:

"The state board of embalming examiners may revoke and void a license obtained by fraud or misrepresentation, or if the person named therein uses intoxicants or drugs to such a degree as to render him unfit to practice embalming, or has been convicted of a felony subsequent to the date of his license, such revocation may be vacated, reversed or set aside for good cause shown at the discretion of the board."

That part which is pertinent to your inquiry gives your board power to revoke the license of one who has been convicted of a *felony* after receiving his license.

The offense referred to in your letter was evidently tried in the municipal court and a fine imposed, and it would not appear to have resulted in the conviction for a felony, a part of the punishment of which is death, or imprisonment in the state penitentiary or other penal institutions. This distinguishes a felony from a misdemeanor.

Your second question is, therefore, answered in the negative.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1594.

BUREAU OF FISH AND GAME—PROTECTORS MUST BE TWENTY-ONE YEARS OF AGE.

The position of fish and game protector, provided for by section 1439 G. C., 108 O. L. Part I, p. 598, is an "office" within the meaning of section 4 of Article XV of the constitution of Ohio. A fish and game protector must, therefore, have all the qualifications of an elector, one of which is that he must be of the age of twenty-one years.

COLUMBUS, OHIO, September 27, 1920.

HON. A. C. BAXTER, *Chief, Bureau of Fish and Game, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter requesting my opinion on the question, "Is it lawful to appoint a junior fish and game protector?" Inspection of two letters which your department has received, and which accompanied your letter to this office, shows that you are interested in ascertaining whether persons under the age of twenty-one years may legally be appointed fish and game protectors of the state of Ohio.

Your attention is invited to the following section of the constitution of Ohio:

Art. XV, Sec. 4. "No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector * *."

Art. V, Sec. 1. "Every white male citizen of the United States, of the age of twenty-one years * * * shall have the qualifications of an elector * * *"