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COSMETOLOGY, STATE BOARD OF—CANNOT HOLD MEETINGS WITH ONLY ONE MEMBER PRESENT—ONE MEMBER ONLY IN ATTENDANCE CANNOT DRAW PER DIEM—ONE MEMBER CANNOT AUTHORIZE ANOTHER MEMBER TO ACT FOR HIM IN TRANSACTION OF BUSINESS—§4713.18, R.C.

SYLLABUS:

1. The state board of cosmetology cannot lawfully hold a meeting for the transaction of business with only one member of said board in attendance.

2. The chairman of the state board of cosmetology may lawfully call meetings specifying each consecutive day as a separate meeting day.

3. A member of the state board of cosmetology cannot draw the per diem and expenses for attendance at a meeting at which he is the only member in attendance.

4. A member of the state board of cosmetology cannot lawfully authorize and direct, by a power of attorney, the remaining member or members to act for him in the transaction of business of said board; however, pursuant to the provisions of Section 4713.18, Revised Code, the state board of cosmetology may authorize, in writing, any of its members, to undertake any proceedings for the purpose of making a finding or the issuance of an order, and the acts of a member or members so authorized, when approved by the board, become the findings and orders of said board.

Columbus, Ohio, July 28, 1959

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion concerning the functions of the State Board of Cosmetology. Specifically you wish to know whether or not:

“(1) The Cosmetology Board may lawfully hold a meeting and transact business with only one member of such board in attendance.

“(2) The Chairman of the said Cosmetology Board may lawfully call meetings specifying each consecutive day as a separate meeting day.

“(3) A member of the Cosmetology Board when only one member is present may lawfully draw the per diem and expenses for attendance at such meeting.

“(4) A member of the Board of Cosmetology may, by a ‘Power of Attorney’, authorize and direct the remaining member or members to act for such absentee in the transaction of business.

“(5) The attendance of one member with the ‘Power of Attorney’ of another member may lawfully transact business of the board.”

Section 4713.02, Revised Code, in its pertinent parts provides:

“There is hereby created the state board of cosmetology, *to consist of three members*, two of whom shall be graduate cosmetologists and one of whom shall be a regularly licensed physician.

“ * * *

“The members of the board shall receive fifteen dollars per diem for every meeting of the board which they attend, together with their necessary expenses, and mileage for each mile necessarily traveled. All such compensation, necessary expenses, and mileage, shall be paid upon warrant of the auditor of state and charged against the board’s rotary funds and no part thereof shall be paid out of other state funds.

“The members of the board shall, annually, elect from among their member, a chairman, and shall, annually, appoint a secretary who shall not be a member of the board. * * *.

“The board shall prescribe the duties of its officers and establish an office at Columbus, at which all records and files of the board shall be kept, which records and files shall at all reasonable hours be open to public inspection. The board shall also adopt a seal.

“* * *

“The board shall also keep a record of its proceedings, *and it shall do all things necessary to carry out sections 4713.01 to 4713.21, inclusive, of the Revised Code.*” (Emphasis added)

Section 4713.03, Revised Code, provides:

“The state board of cosmetology shall hold a meeting for the examination of applicants for license and the transaction of such other business as shall pertain to its duties at least twice a year, one of which meetings shall be held in Cleveland, and one in Cincinnati, and the board may hold other meetings for the examination of applicants or for the transaction of necessary business as, in its judgment, may be required, at such times and places as it may determine.”

Also to be considered in connection with the questions presented is Section 4713.18, Revised Code:

“The state board of cosmetology *may authorize any of its members, in writing, to undertake any proceedings authorized by sections 4713.01 to 4713.21, inclusive, of the Revised Code, and the finding or order of such members is the finding of the board when confirmed by it.*” (Emphasis added)

At common law the presence of all members of a public body was required for the lawful transaction of its business. A quorum consisting of a majority suffices in Ohio at the present time. 30 Ohio Jurisprudence, page 690. “Majority” has been construed as meaning either the greater of two unequal parts of the whole, or the greatest of several unequal parts; in the latter sense being usually called “plurality.” 30 Ohio Jurisprudence, page 692. In the case of the state board of cosmetology, which is composed of three members, a quorum for the transaction of business apparently means the presence of two members under either interpretation of the word “majority.”

An examination of Section 4713.18, *supra*, discloses that the first clause of the sentence containing the words “any of its members,” is followed by the words “of such members,” from which the conclusion may be drawn that authorization to undertake proceedings contemplated by the terms of the section may be granted by the board to either one or two of its members. This impression is fortified by the reading of Section 1082-21, General Code, from which present Section 4713.18, *supra*, was drawn at the time the General Code of Ohio was revised in 1953. Section 1082-21, General Code reads as follows:

“Any proceeding which the board is empowered to undertake, may be undertaken by or before one or more members of the board, and the finding or order of such member or members shall be deemed to be the finding or order of the board when approved or confirmed by it; *provided, however, that no proceedings shall be held or undertaken by a member only, or by members of the board less than the entire number thereof, without previous authorization of the board, in writing.*” (Emphasis added)

It further appears from the proviso in Section 1082-12, General Code, that in the absence of authorization by the board of one or two of its members to undertake proceedings embraced therein, such proceedings were invalid unless all three of the members were present. This proviso must apparently be read into Section 4713.18, *supra*, in the light of Section

1.24, Revised Code, containing “declaration of legislative intent,” wherein it is provided:

“That in enacting this act it is the intent of the General Assembly *not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act.* The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, *and not as new enactments.*” (Emphasis added)

In view of the fact that the text of Section 1082-21, General Code, in the process of revision was completely changed, the statement in Cooley’s Brief Making (3rd Edition), page 343, appears applicable:

“Generally, the words of a statute are to be construed in the light of pre-existing law. The reason for this rule is simply that the pre-existing law was part of the atmosphere that surrounded and suggested the new statute, and the new statute cannot be thoroughly understood if isolated from its cause. To quote the words of Chief Justice Coke, the prior law is ‘the very lock and key to set open the windows of the statute.’”

Do the words “any proceeding which the board is empowered to undertake, may be undertaken by or before one or more members of the board,” which must be accepted as authoritative, include the holding of a meeting of the board of cosmetology? Black’s Law Dictionary (4th Edition) defines a “meeting” as:

“A coming together of persons; an assembly. Particularly, in law, an assembling of a number of persons for the purpose of discussing and acting upon some matter or matters in which they have a common interest. *People v. Mintz*, 106 Cal. App. 725, 290 p. 93,100.”

This definition, which is in accord with the meaning given to “meeting” in the common and ordinary use of the word, apparently precludes an interpretation of “proceedings” so broadly as to embrace a meeting. This despite the fact that we are thus confronted with the somewhat anomalous situation whereby a meeting of the board can apparently lawfully transact business with two of its members present, a proceeding in the contemplation of Section 4713.18, *supra*, which results in the making of findings and the issuance of orders, may act only if all members are present, unless prior authority is given to one or two members of the

board. Had the General Assembly intended to give the word "meeting" a broader meaning than that sanctioned by common usage, it could have done so, since the power of a legislative body to define words to meet legislative needs is well settled, by expressly saying that "meeting" shall be embraced within "any proceedings."

Having arrived at the conclusion indicated, it follows that a power of attorney has no place in connection with the holding of meetings of the board of cosmetology, and that such authorization of two of the board's members given to the remaining member is without legal effect. As to your inquiry whether two members may be so authorized for the purpose of holding a meeting, the obvious answer appears to be that such authorization, even if legally permissible, would be superfluous, since two members, as we have seen, constitute a quorum for the purpose of holding a meeting. In line with the foregoing, it follows that while a member of the board cannot draw the per diem for a meeting at which he is the only one in attendance, in the light of the fact that "per diem" is Latin for "by the day," no valid objection can be made against designation of each consecutive day of a meeting by the chairman of the board as a separate meeting, provided a quorum is present, it being clear that the pay of members in attendance would be no less if a session lasting more than one day were designated as one meeting.

With reference to your fifth question, please note that the answer to it is implicit in what appears to me as the law governing the preceding query, for which reason a separate discussion of that question is not required.

Drawing the conclusions apparently warranted by the authorities cited herein, it is my opinion:

1. The state board of cosmetology cannot lawfully hold a meeting for the transaction of business with only one member of said board in attendance.
2. The chairman of the state board of cosmetology may lawfully call meetings specifying each consecutive day as a separate meeting day.
3. A member of the state board of cosmetology cannot draw the per diem and expenses for attendance at a meeting at which he is the only member in attendance.

4. A member of the state board of cosmetology cannot lawfully authorize and direct, by a power of attorney, the remaining member or members to act for him in the transaction of business of said board; however, pursuant to the provisions of Section 4713.18, Revised Code, the state board of cosmetology may authorize, in writing, any of its members, to undertake any proceedings for the purpose of making a finding or the issuance of an order, and the acts of a member or members so authorized, when approved by the board, become the findings and orders of said board.

Respectfully,
MARK McELROY
Attorney General