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1. DENTAL OFFICE—WHERE TWO DENTISTS JOINTLY OWN, OPERATE AND CONDUCT MORE THAN ONE—NAMES APPEAR ON OR ABOUT EACH OFFICE—CERTAIN SPECIFIED HOURS, ONE DENTIST IS PRACTICING IN ONE OFFICE, THE OTHER DENTIST IN ANOTHER OFFICE—AT OTHER TIMES THE DENTISTS EXCHANGE OFFICES—SOMETIMES DENTISTS ARE TOGETHER IN SAME OFICE—NO VIOLATION OF SECTION 1329-1 G. C.

2. WHERE DENTIST DIVIDES TIME EQUALLY BETWEEN TWO OFFICES AND HAS NO OFFICE WHEREIN HE PRACTICES THE MAJORITY OF HIS TIME, IT DOES NOT COMPLY WITH LITERAL LANGUAGE OF SECTION 12711 G. C.—DOES NOT NECESSARILY FOLLOW SUCH DENTIST IS SUBJECT TO PROSECUTION—REQUIREMENT, LICENSE BE DISPLAYED IN PARTICULAR OFFICE WHERE DENTISTRY PRACTICED AT PARTICULAR TIME.

SYLLABUS:

1. In a case where two dentists jointly own, operate and conduct more than one dental office, have their names appearing on or about each of said offices, and one dentist is practicing in one office during certain specified hours whereas the other dentist is practicing in another office during certain specified hours, and at other times said dentists exchange and each of them practices in the other office, and on some occasions said dentists are together in one or the other of their offices, such facts are not sufficient to constitute a violation of the terms of Section 1329-1, General Code.

2. A dentist who divides his time equally between two offices and as a consequence has no office wherein he practices the majority of his time can not comply with the literal language of Section 12711, General Code. However, it does not

necessarily follow that such dentist is subject to prosecution under the terms thereof if, in such a situation, the registrant's license is being displayed in the particular office in which he is practicing dentistry at the particular time.

Columbus, Ohio, October 1, 1948

Earl D. Lowry, D.D.S., Secretary
Ohio State Dental Board
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

"The Ohio State Dental Board respectfully requests your formal opinion on the following situation:

"Two dentists, Dr. A and Dr. B, jointly own, operate and conduct more than one dental office. The names of Dr. A and Dr. B appear on and about each of said offices. Dr. A practices in one office during certain specified hours, while Dr. B is practicing in another office during certain specified hours. At other times Dr. A and Dr. B exchange and each then practices in the other office. On some occasions they are together in one or the other of the offices. This arrangement results in Dr. A and Dr. B dividing their respective time about equally between each of the offices jointly conducted by them.

"The question under consideration by the Board and presented herewith for your formal opinion is whether such an arrangement violates the provisions of the dental law of Ohio, and more specifically Section 1329-1, General Code of Ohio, with particular reference to the following wording: 'It shall be unlawful for any person or persons to practice or offer to practice dentistry or dental surgery * * * and he shall not conduct a dental office in his name nor advertise his name in connection with any dental office or offices unless he is himself personally present in said office operating as a dentist or personally overseeing such operations as are performed in said office or each of said offices during a majority of the time said office or each of said offices is being operated by him'.

"A corollary question is raised concerning the fulfillment of the requirement of Section 12711, General Code of Ohio, which provides that a dentist must keep his license displayed in a conspicuous place in the office wherein he practices the majority of his time. How can the provision of this section be met if Dr. A and Dr. B divide their time equally between two or more offices."

Reference is made in your said request to Section 1329-1, General Code, which, as amended by the 91st General Assembly and effective July 12, 1935 (116 O. L. 82), was changed to read as is now set forth:

> "It shall be unlawful for any person or persons to practice or offer to practice dentistry or dental surgery, under the name of any company, association, or corporation, and any person or persons practicing or offering to practice dentistry or dental surgery shall do so under his name only *and he shall not conduct a dental office in his name nor advertise his name in connection with any dental office or offices unless he is himself personally present in said office operating as a dentist or personally overseeing such operations as are performed in said office or each of said offices during a majority of the time said office or each of said offices is being operated by him;* any person convicted of a violation of the provisions of this section shall be fined for the first offense not less than one hundred dollars, nor more than *five* hundred dollars, and upon a second conviction therefor, his license may be suspended or revoked, as provided in Section 1325 of this act."
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> (Emphasis added.)

The effect of the amendment of aforesaid section was two-fold. There was inserted therein the language above emphasized commencing with the word "and" and ending with "him." In addition the word "five" was substituted for "two" which thereby served the purpose of increasing the amount of the fine that could be imposed for a violation of said section. Your inquiry centers around the significance of the added matter.

By way of a preliminary observation it is to be noted that in Brown v. State of Ohio, 30 N. P. (ns) 439, decided in 1933 and hence before the present section became effective, the court stated:

> "The plain purpose of the statute was to require dentists, who see fit to advertise themselves in any manner, to do so in their individual capacity and not under a trade name. Obviously, if the public seeking dental services can be invited into a dental parlor called The New Method Dental Parlor, which today Dr. Carl F. Brown is operating, but next month another dentist may be operating and the following month still another, patients would be likely to be misled, possibly, indeed probably to their injury.
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> "Dentistry is a learned profession, so recognized by our General Assembly, our courts and the people at large. Therefore it is perfectly proper for a legislature to impose a restriction such as contained in Section 1329-1, and it is incumbent upon all dentists to conform thereto."

The gist of this statement is that former Section 1329-1, General Code, was designed to prevent people from being misled or deceived. The view is here entertained that the added matter was intended as a furtherance of that same general policy or end. With this in mind attention is now called to Section 1329, General Code, which provides inter alia:

> "Any person shall be regarded as practicing dentistry, within the meaning of this act, who is a manager, proprietor, operator or conductor of a place for performing dental operations 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, * * *"

It will be seen from the foregoing it is not essential that, in order for a person to be engaged in the practice of dentistry as defined by law, he be engaged in performing some manual service upon the mouth of a patient. Operating or conducting a place where such services are performed is sufficient to subject one to the penal provisions of said Section 1329-1, General Code, when not licensed to practice dentistry. Note that the words *"operator or conductor* of a place for performing dental operations" are used. The word "operator" as here used does not, of course, connote that a person must be engaged in the rendition of some service for a patient that is manual in nature.

Specific attention is now directed to the language that was added to Section 1329-1, General Code, when amended. It may be quite true that, under the facts recited in your inquiry, when dentist A is engaged in performing dental services in an office which is owned jointly with dentist B said services are not being overseen by the latter. But can it be said that it was the legislative intent to curb or restrict such a situation? There is no suggestion whatever that dentist A is in the employ of dentist B. It would appear to me that what the General Assembly had in mind by the amendment in question was to eliminate chain dental establishments. It is quite patent that if a dentist owned a number of dental establishments wherein dental services were being rendered by employed dentists such an arrangement could not conceivably be carried on under Section 1329-1, General Code, as it now exists. It would be impossible, as is prescribed by the statute, for the owner-dentist to be in more than one establishment during a majority of the time either personally overseeing dental operations being conducted therein or actually operating as a dentist. There is no suggestion whatever in your inquiry that dentist A is in the employ of

dentist B or vice versa. If the view here taken is not adopted then the section in question would have to be given a distorted application in regard to the facts recited. This was clearly not intended.

It can hardly be asserted that two or more dentists are precluded from maintaining joint offices in the sense that a single reception or waiting room may be made available for the patients of each dentist. Moreover there is certainly no restriction against two or more dentists having office assistants or employes who render services for all dentists who are jointly engaged in practicing dentistry under the circumstances and conditions just related. It would have to be further conceded that if the dentists mentioned in your inquiry had adjoining but entirely separate offices in a particular building and the same situation existed in respect of another building there would be no conceivable basis for holding that the terms of Section 1329-1, General Code, were being violated for that reason alone. In this connection I am using the words "separate offices" as connoting that each of such offices is under the exclusive control of one dentist. Should the situation be any different in the case where it is found expedient to combine two or more small offices and establish one large office where there is a common reception or waiting room and two names are placed on the door?

Bearing in mind each of the dentists in question has his name on the door the provisions of Section 1329-1, General Code, are certainly being complied with in that each dentist is engaged in practicing "under his name only." Wherein is any one being misled or being deceived? It can hardly be asserted that because a person entered a dental office where there are two names on the door and one dentist happens to be home ill, or is out to lunch or away on a vacation that there is any intended deception. Therefore, on the facts recited I am of the opinion that the terms of Section 1329-1, General Code, are not being violated.

I shall now turn to your second question and in that connection you have also called attention to Section 12711, General Code, which provides:

> "Whoever engages in the practice of dentistry and fails to keep displayed in a conspicuous place in the *office wherein he practices the majority of his time,* and in such manner as to be easily seen and read, the license granted him pursuant to the laws of this state shall be fined not less than *twenty-five* dollars nor more than one hundred dollars." (Emphasis added.)

Said section has been in force and effect as above set forth since 1935 (116 O. L. 82). Immediately prior thereto it provided (106 O. L. 297):

> "Whoever engages in the practice of dentistry and fails to keep displayed in a conspicuous place in the *operating room in which he practices,* and in such manner as to be easily seen and read, the license granted him pursuant to the laws of this state shall be fined not less than *fifty* dollars nor more than one hundred dollars." (Emphasis added.)

The section as last set out was the subject of consideration by one of my predecessors. The question he was asked is: "If it is unlawful for a person or persons to practice, other than under his own name, how is it possible for one to own more than one office?"

In answer thereto my aforesaid predecessor, in Opinions of the Attorney General for 1927, Vol. III, page 2368, adverted to an earlier opinion and said:

> "The specific question which you ask was under consideration in an opinion of this department rendered on November 30, 1923, and appearing in the Attorney General's Opinions for that year on page 757. The syllabus of that opinion reads as follows:
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> > " 'Under the laws of Ohio a person may maintain more than one office if said person displays a license in conformity with Section 12711, General Code.' "

It is immediately apparent that under this former section a dentist would be compelled to take the license granted him from one office to another in order to comply therewith. It would seem that, with a view to correcting a situation that was in need of correction, the section as last amended was changed so as to give the dentist some relief from the difficulties that would be experienced in complying therewith. The hardship was lessened by merely requiring a dentist to keep his license in that office in which he practices the majority of his time. In view of this amendment you now ask, "How can the provisions of this section be met *if* Dr. A and Dr. B divided their time *equally* between two or more offices?" Before proceeding to comment on that matter it might be pointed out that, since this is a penal section, conviction can be secured thereunder only if noncompliance is proved beyond a reasonable doubt. This might pose some serious difficulty. The words "majority of the time" relate to no specific period such as a week, day, month or year. It is entirely conceivable that a dentist could spend a majority of his time in one office during a par-

ticular month and yet, over a period of a year, if a year is to be used as the yardstick, could spend a majority of his time in another office. While not specifically presented by your inquiry and hence not necessary to decide, some credence can be given to the view that a year might well be used as the yardstick since, under the terms of Section 1321-4, General Code, a dentist is required to pay an annual registration fee. If this is not done then by virtue of that section said license may be revoked by the state dental board.

It is quite difficult to conceive of a situation where a dentist divides his time "equally" between two offices. In the sense that you are using that word it permits of no latitude one way or the other. It would obviously be impossible for a dentist to comply with the literal language of Section 12711, General Code, under such circumstances since there is no office wherein the dentist practices a majority of his time. It is felt, however, it should be pointed out it does not necessarily follow that under such a situation a dentist is subject to prosecution. If the license were on display at the office at the particular time the practice of dentistry was being engaged in thereat it could not be said there was a violation of law. I find nothing in present Section 12711, General Code, which precludes a dentist from taking his license from one office to another office. This would constitute a compliance with the section as it formerly existed. See Opinions of the Attorney General for 1927, Vol. III, page 2368. The section as amended and as now in force does not, as has been indicated, have such far reaching effect as the predecessor section. But doing more than a statute requires certainly can not, in every instance, lay one open to a charge of a violation thereof.

In specific answer to your questions you are therefore advised as follows:

1. In a case where two dentists jointly own, operate and conduct more than one dental office, have their names appearing on or about each of said offices, and one dentist is practicing in one office during certain specified hours whereas the other dentist is practicing in another office during certain specified hours, and at other times said dentists exchange and each of them practices in the other office, and on some occasions said dentists are together in one or the other of their offices, such facts are not sufficient to constitute a violation of the terms of Section 1329-1, General Code.

2. A dentist who divides his time equally between two offices and as a consequence has no office wherein he practices the majority of his time can not comply with the literal language of Section 12711, General Code. However, it does not necessarily follow that such dentist is subject to prosecution under the terms thereof if, in such a situation, the registrant's license is being displayed in the particular office in which he is practicing dentistry at the particular time.

Respectfully,

HUGH S. JENKINS,

Attorney General.