

As indicated by the decision of the Supreme Court in the case of *Commissioners vs. Rosche Brothers, supra*, neither the state nor the counties wherein interurban railroad companies paid taxes on property owned and used by them were under any moral obligation to refund such taxes at the time of the enactment of House Bill No. 674, above referred to. See *Spitzig vs. State, ex rel.*, 119 O. S. 117, 120. In this view, it seems clear that the statutory provisions here under consideration cannot be construed so as to authorize the refunder of taxes voluntarily paid by interurban railroad companies prior to the enactment of House Bill No. 674, without offending the provisions of section 28 of article II of the state constitution, above noted.

Upon the considerations above discussed and by way of specific answer to the question made in your communication, I am of the opinion that the county auditor and county commissioners of Ottawa County are not authorized to refund to the Ohio Public Service Company the taxes heretofore paid by it upon property owned and used by it in the operation of an interurban railroad in said county.

In conclusion, it is, perhaps, pertinent for me to say that no opinion is here expressed or intended with respect to the constitutionality of the provisions of House Bill No. 674 generally or in their application to unpaid taxes for the year 1933 assessed against the property of interurban railroad companies used in operation. As above indicated, this opinion is limited solely to the question of the authority of the county to refund property taxes which were paid by an interurban railroad company prior to the enactment of House Bill No. 674, above noted and discussed.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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2379.

BARBER—BOARD OF BARBER EXAMINERS UNAUTHORIZED TO REVOKE LICENSE OF BARBER BECAUSE CONVICTED OF FELONY PRIOR TO SEPTEMBER 28, 1933.

**SYLLABUS:**

*The State Board of Barber Examiners is without authority to suspend or revoke a license of a barber because of the fact that he has been convicted of a felony prior to September 28, 1933, in the absence of a showing of misrepresentation in the original application for such license.*

COLUMBUS, OHIO, March 16, 1934.

*State Board of Barber Examiners, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“This board requests an opinion on Section 1081-17 (1) of the General Code as to the suspension of a license of a barber who has been convicted of a felony before September 28, 1933.”

Amended Senate Bill No. 129 (115 O. L. 312), creating the State Board of Barber Examiners, was passed by the 90th General Assembly. In the State of Ohio the business of barbering is subject to an extensive system of regulation. All barbers must now have a certificate of registration and those entering the business after September of 1933 must pass certain examinations. Section 1081-17, General Code, enumerates the grounds upon which a certificate of registration may be refused, suspended or revoked. This section reads in full as follows:

"The board may either refuse to issue or renew or may suspend or revoke any certificate of registration for any one or combination of the following causes:

- (1) Conviction of a felony shown by a certified copy of the record of the court of conviction.
- (2) Continued practice by a person knowingly having an infectious or contagious disease.
- (3) Advertising by means of knowingly false or deceptive statements.
- (4) Advertising, practicing or attempting to practice under a trade name or name other than one's own.
- (5) Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs.
- (6) Immoral or unprofessional conduct; and
- (7) The commission of any of the offenses described in section 22, subdivisions 3, 4, and 5.
- (8) The violation of section 13047 of the General Code of Ohio.
- (9) The violation of any of the sanitary regulations promulgated by either the board of barber examiners or state department of health for the regulation of barber shops.
- (10) To continue to be employed in a barber shop wherein the sanitary regulations of the board of barber examiners or state department of health promulgated for the regulation of barber shops are known by the registered barber or registered apprentice to be violated."

Your inquiry raises the question of whether or not your board may suspend or revoke a certificate of registration already issued, due to the fact that the holder of such license has been convicted of a felony previous to the enactment of Amended Senate Bill No. 129. In other words, is section 1081-17, General Code, prospective or is it also retroactive? I have quoted this section in full, supra, in order to show that if sub-section (1) is to be given a retroactive construction, it is perhaps the only ground of suspension or revocation that is retroactive. An examination of the other grounds of suspension and revocation disclose that they are entirely prospective. While this is not entirely dispositive of your question, it nevertheless indicates the legislative intent to regulate the conduct of barbers in their business, which occurs after the effective date of the new barbers' law.

Your request presents a peculiar situation. No doubt, years ago some person has been so unfortunate as to have been found guilty of having committed a felony. He has served his sentence and has secured his final release. When he was found guilty of this offense, he was subject to the penalties of the law then in existence. At that time there was no law that would prevent him from being a barber after he was released from prison. Now the legislature passes a new barbers' law. In the absence of express language indicating such an intent, it

cannot be fairly presumed that the legislature intended this ground of suspension or revocation to work retroactively. As stated in 2 Lewis' Sutherland Statutory Construction, page 1157:

"The general rule is that statutes will be construed to operate prospectively only, unless an intent to the contrary clearly appears. It is said 'that a law will not be given a retrospective operation, unless that intention has been manifested by the most clear and unequivocal expression.'"

The legislature has recognized that laws to be given a retroactive effect should be worded that way very clearly.

Section 1343-2, General Code, before its repeal by the new Embalmers' and Funeral Directors' Act read 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 *prior or 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, nor shall anything in this act apply to any person who has matriculated in an embalming college recognized by the Ohio state board of embalming examiners, prior to the passage of this act."

(Italics the writer's.)

It is significant to point out that the applicants for certificates of registration without examination were not asked to state in their applications whether or not they had previously been convicted of a felony. Hence, no question of misrepresentation in the securing of a license is presented.

Without further extending this discussion, it is my opinion in specific answer to your question that the State Board of Barber Examiners is without authority to suspend or revoke a license of a barber because of the fact that he has been convicted of a felony prior to September 28, 1933, in the absence of a showing of misrepresentation in the original application for such license.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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2380.

LEGAL SETTLEMENT—ACQUIRED BY WOMAN MARRYING PERSON  
HAVING LEGAL SETTLEMENT IN COUNTY REGARDLESS OF HER  
PERIOD OF RESIDENCE IN SUCH COUNTY—BLIND RELIEF.

SYLLABUS:

*Where a woman marries a person who has a legal settlement in a county, she thereby acquires by her marriage such legal settlement without living therein for twelve consecutive months.*