

You have submitted an encumbrance estimate which contains the certificate of the Director of Finance to the effect that funds are available for the payment of rental for the months of May and June, 1936.

Finding said lease in proper legal form, I hereby approve it as to form and return it herewith.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5629.

BARBERS—BOARD MAY LICENSE APPLICANT FROM ANOTHER STATE WHEN—MAY REFUSE TO RECOGNIZE SCHOOL OF BARBERING WHEN.

*SYLLABUS:*

1. *A person who has barbered in another state, and who seeks a license to barber in Ohio must comply with the provisions of Section 1081-19, General Code. The State Board of Barber Examiners is invested with discretion to determine whether or not a person who makes such an application has the necessary qualifications.*

2. *The sole fact that a school of barbering teaches a course of instruction in excess of one thousand hours, would not justify the State Board of Barber Examiners in refusing to approve such a school.*

3. *The State Board of Barber Examiners may refuse to approve a school of barbering that does not teach the required course of instruction but may not order the closing of such a school.*

COLUMBUS, OHIO, May 27, 1936.

*State Board of Barber Examiners, 605 Wyandotte Building, Columbus, Ohio.*

GENTLEMEN: This will acknowledge receipt of your request for my opinion upon the following questions:

1. What is the meaning of the words "immediately prior to making application" as the same are used in Section 1081-19, General Code?

2. May the State Board of Barber Examiners compel a school of barbering to discharge a student at the expiration of one thousand hours schooling?

3. Does the state barber law give this board power to close a barber school or college that is not teaching our curriculum?

Section 1081-19, General Code, referred to in your letter, provides the procedure whereby a barber coming into this state from another state may secure a license to barber in Ohio without first attending a school of barbering recognized by your board and serving an apprenticeship. Section 1081-19, General Code, reads in part as follows:

“(1) A person who is at least eighteen years of age and has a diploma showing graduation from an eighth grade grammar school, or an equivalent education as determined by an examination conducted under the supervision of the board, and either has a license or certificate of registration as a practicing barber from another state or country, which has substantially the same requirements for licensing or registering barbers as required by this act, or who can prove by sworn affidavits that he has practiced as a barber in another state or country for at least two years immediately prior to making application in this state, shall upon payment of the required fee be issued a permit to practice as a journeyman barber until he is called by the board for examination to determine his fitness to receive a certificate of registration to practice barbering.

If such applicant fails to pass the examination he shall be permitted to continue to practice as a journeyman barber until the next examination when he shall again be examined to determine his fitness to receive a certificate.

Should any such applicant fail to pass three such examinations he shall not be eligible for further examination and shall not be qualified to continue to practice in this state.”

You inquire as to the meaning of the words “immediately prior” in the above quoted section. It is clear that a person who has an eighth grade education or its equivalent and who can prove by sworn affidavits that he has barbered in another state for at least two years immediately prior to making application, may secure a permit to practice as a barber until called to take an examination by your board. It is a fundamental principle of statutory construction that effect must be given to all the language of a statute. In other words, had the legislature intended that the practice of barbering in another state for a two-year period would be sufficient, without regard to when that two-year period had been served, it would have been unnecessary to have included the words “immediately prior” in Section 1081-19, General Code, *supra*. No doubt the legislature had in mind a situation where a person might have barbered for a two-year period in another state but such period of barbering might have occurred quite a number of years prior to the making of the application in this state. Such a person by reason of his lay off from the actual

practice of barbering, might not be thought to be qualified to barber in Ohio in the absence of his producing a license from another state that has qualifications similar to those required in Ohio. The words "immediately prior" therefore, would seem to require that a person be in the active practice of barbering for a period of two years just before he makes application in this state. However, it is evident that some time must elapse before a person leaving another state could make an application in this state. Consequently, some discretion is placed in the State Board of Barber Examiners and in the absence of an abuse of that discretion, a court would not substitute its judgment for that of your board.

Just how much time might elapse before your board would be precluded from issuing the certificate cannot be answered as a matter of law. However, it is believed that the above observations are a sufficient answer to your first inquiry.

Your second question pertains to the authority of your board to require that a student be discharged from a school of barbering at the expiration of a thousand hours of schooling. In other words, you inquire whether or not your board may refuse to recognize a school of barbering that teaches a course consisting of more than one thousand hours. In this connection I call your attention to the provisions of Section 1081-20, General Code, which reads as follows :

"No school of barbering shall be approved by the board unless it requires as a prerequisite for admission thereto graduation from the eighth grade of grammar school or an equivalent education as determined by an examination under the supervision of the board, and unless it requires as a prerequisite to graduation *a course of instruction of not less than one thousand hours* of continuous instruction of not more than eight hours in any one working day, such course of instruction to include the following subjects: Scientific fundamentals for barbering, hygiene and bacteriology; histology of the hair, skin, muscles and nerves; structure of the head, face and neck; elementary chemistry relating to sterilization and antiseptic; diseases of the skin, hair and glands; massaging and manipulating of the muscles; and cutting, shaving, arranging, dressing, coloring, bleaching and tinting of the hair." (Italics the writer's.)

The above italicized language no doubt was inserted to protect the public from incompetent and unqualified barbers. In other words, the legislature believed that a student should have at least a training of one thousand hours in a recognized school before he could take an examination. However, there is nothing in the above section which requires a school, as a condition precedent to being recognized by the State Board

of Barber Examiners, to give exactly a thousand hour course. A school might not think that it can properly train a student in a thousand hours and consequently gives a longer course. Also there may be other states that require a longer course than a thousand hours and the school might wish to receive students from another state. In addition, the clear language of Section 1081-20, General Code, *supra*, indicates that the legislature had no intention of limiting a school to a maximum of one thousand hours training. It is, therefore, my opinion that your second question must be answered in the negative.

Your third question pertains to the authority of your board to actually close a school of barbering that is not teaching the curriculum provided in Section 1081-20, General Code, and in your rules and regulations. An examination of the entire barber law does not disclose wherein the legislature has given this power to your board. While your board is within their legal authority in refusing to recognize a school of barbering that does not teach the required curriculum, still there is nothing in the law which would give you authority to close the school. The school, although not recognized by your board, might teach a curriculum which would permit their graduates to take an examination in another state. A student that takes a course in such a school could not, of course, take your examination after completing his course of training. In this connection, however, it should be noticed that even a non-recognized school must obey the sanitary provisions of your law.

Summarizing, it is my opinion, in specific answer to your inquiries :

1. A person who has barbered in another state, and who seeks a license to barber in Ohio must comply with the provisions of Section 1081-19, General Code. The State Board of Barber Examiners is invested with discretion to determine whether or not a person who makes such an application has the necessary qualifications.

2. The sole fact that a school of barbering teaches a course of instruction in excess of one thousand hours, would not justify the State Board of Barber Examiners in refusing to approve such a school.

3. The State Board of Barber Exminers may refuse to approve a school of barbering that does not teach the required course of instruction but may not order the closing of such a school.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*