

746.

APPROVAL, BONDS OF MALINTA-GRELTON UNION RURAL SCHOOL DISTRICT, HENRY COUNTY—\$80,000.00.

COLUMBUS, OHIO, August 15, 1929.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

---

747.

APPROVAL, BONDS OF GEORGETOWN VILLAGE SCHOOL DISTRICT, BROWN COUNTY—\$2,500.00.

COLUMBUS, OHIO, August 15, 1929.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

---

748.

LICENSE FEE—FOR RECIPROCAL PHARMACIST CERTIFICATE—PAID INTO TREASURY BY MISTAKE—APPLICANT SHOULD SEEK REFUND FROM SUNDRY CLAIMS BOARD.

**SYLLABUS:**

*A license fee collected in advance for the issuance of a reciprocal certificate by the State Board of Pharmacy under the provisions of Sections 1311 and 1312, General Code, and paid into the state treasury, which collection and deposit appears to have been made by mistake, cannot be refunded to the person entitled thereto until the Legislature has made a specific appropriation thereof, and, under such circumstances, application should be made by the person seeking such refund to the Sundry Claims Board for action by the Legislature in the event the Sundry Claims Board determines the applicant is entitled to reimbursement.*

COLUMBUS, OHIO, August 15, 1929.

HON. M. N. FORD, *Secretary, State Board of Pharmacy, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“At a meeting of our board last week, I was directed to request an official opinion from your department, on the following:

On April 1st, 1929, a reciprocal certificate was granted Paul B. Redmon, upon his registration in the state of Indiana. The certificate was granted

after Mr. Redmon had personally appeared before the board and had submitted his official application with the necessary credentials, that indicated he had all the requirements needed for examination in this state, at the time of his examination and registration in the state from which he applied.

After the certificate had been granted, information was brought to our attention, that at the time of examination of Mr. Redmon in the state from which he applied, he did not have the necessary requirements that would have admitted him to our examination—to-wit: Upon the completion of his college course from a college which is recognized by our board, Mr. Redmon appeared before the Indiana board and submitted to a theoretical examination without having the required drug store experience. After completing this part of the examination, he was permitted to secure his apprenticeship, after which he returned to the Indiana board and completed his examination, and was granted his certificate.

The Ohio law will not permit applicants to take the examination until all requirements have been met. Our board does not believe it proper and just to grant special favors to applicants coming from another state, therefore, after this information had come to the board, Mr. Redmon was again called before the board and freely admitted that the above conditions were true. With the above facts before the board, they unanimously voted to cancel Mr. Redmon's certificate, under date of June 21st, 1929.

The question is, therefore, has our board the legal right to refund the fee of fifty dollars or any part thereof?"

From the facts set forth in your letter, I assume that the fee of fifty dollars was collected by you from Mr. Redmon in advance on April 1, 1929, at the time of issuing the reciprocal certificate and paid by you into the State treasury in accordance with the provisions of Sections 1311 and 1312, General Code. There may be some question as to the legality of the certificate issued, and, if such issuance was valid, the further question as to the authority to revoke under these circumstances. You do not, however, request my opinion on these matters and I accordingly do not pass thereon. Apparently, from the facts set forth in your letter, this fee was collected and certificate was issued by mistake. The question then becomes, may money so collected and paid into the State treasury be refunded?

This matter was considered by my predecessor in an opinion found in Opinions of the Attorney General for 1927, Vol. I, p. 479, the syllabus of which is as follows:

"Money paid into the state treasury by mistake cannot be refunded to the person entitled thereto unless the Legislature has made a specific appropriation thereof."

In a later opinion, found in Opinions of the Attorney General for the year 1928, Vol. I, p. 367, a similar question was considered relative to a refund to an applicant for a license or certificate to practice nursing in the State of Ohio when the applicant had tendered the registration fee to the State Medical Board with an application and such fee was paid into the State treasury before determination of whether or not the applicant was entitled to a license. It was held that under such circumstances, where an applicant was entitled to the return of such fee, the applicant may present his claim to the Sundry Claims Board for action by the Legislature in the event the Sundry Claims Board determines that the applicant is entitled to reimbursements.

These opinions, in which I concur, are dispositive of the question which you present, and I therefore advise in specific answer to your inquiry that, in my opinion, a license fee collected in advance for the issuance of a reciprocal certificate by the State

Board of Pharmacy under the provisions of Sections 1311 and 1312, General Code, and paid into the State treasury, which collection and deposit appears to have been made by mistake, cannot be refunded to the person entitled thereto until the Legislature has made a specific appropriation thereof, and that under such circumstances, application should be made by the person seeking such refund to the Sundry Claims Board for action by the Legislature in the event the Sundry Claims Board determines the applicant is entitled to reimbursement.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

---

749.

APPLICANT—COUNTY TEACHER'S CERTIFICATE—EXAMINATION  
 DISCUSSED.

*SYLLABUS:*

*Applicants for county teachers' certificates, who elect to be examined in all subjects at one examination, but who fail in one or more subjects, must be re-examined in all branches before they are entitled to a certificate.*

COLUMBUS, OHIO, August 15, 1929.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion, as follows:

“Section 7818 of the General Code provides in substance that when an applicant presents himself before the county board of examiners, the examiners shall elect what subjects he shall take, if he desires to take in two different days. It provides that if he elects to take half the first day, he may take the remaining half not later than the second regular examination subsequent thereto, and he will be allowed to take over any subjects in which he does not get a passing grade out of the first half at the time he takes the second half.

The interpretation of the law is that if he elects to take all the examination the first day or in one day, and should pass in all the subjects except one or two, he would not be allowed to take the examination the second day on those two subjects, but would have to begin all over and receive no benefit from the nine or ten subjects which he had successfully passed.

It seems that with that interpretation, the one who takes all the examination in one day is placed in a somewhat unfair position, although he might have made a much better showing than some other person who elects to take but one-half, and having passed in only one subject, we might say he would be allowed to take all the remainder together with the second half at the next examination.

We desire to have an interpretation of this section with the above statement in mind.”

Section 7818, General Code, concerning which you inquire, relates to the examination of applicants for county teachers' certificates, and reads as follows: