

36

1. EMBALMER'S LICENSE—APPLICANTS MUST FULLY COMPLY WITH REQUIREMENTS OF SECTION UNDER WHICH THEY HAVE REGISTERED—EITHER SECTION 1335-3 OR 1335-3a G. C.
2. APPLICANT WHO REGISTERED UNDER SECTION 1335-3 G. C. AND THEN REREGISTERED UNDER SECTION 1335-3a G. C. CAN NOT CLAIM A LICENSE SHOULD BE ISSUED TO HIM BECAUSE HE MEETS PART OF THE REQUIREMENTS OF EACH SECTION—WHEN REGISTERED UNDER SECTION 1335-3a G. C. HE MUST FULLY COMPLY WITH ALL STATUTORY REQUIREMENTS.

SYLLABUS:

Applicants who have registered for an embalmer's license under either Section 1335-3 or 1335-3a of the General Code, must fully comply with the requirements of the section under which they have registered. An applicant who has registered under Section 1335-3 and then reregistered under Section 1335-3a cannot claim that a license should be issued to him because he meets part of the requirements of each section. Having registered under Section 1335-3a, he must fully comply with all requirements of this section.

Columbus, Ohio, February 3, 1949

Mr. C. L. Stout, Secretary-Treasurer
The Board of Embalmers and Funeral Directors
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“We would like to have an opinion, if an applicant registered and certified under Section 1335-3 and served some time, and then surrendered his registration certificate and re-registered under the new law, which became effective September 4, 1947, Section 1335-3a, would be eligible for the period of apprenticeship served, after completing his embalming school according to the above section, which requires one year of apprenticeship served after the completion of Embalming College and upon successfully passing the embalmers' examination.”

Section 1335-3, General Code, reads as follows :

“* * * The board shall fix the qualifications of applicants and the standard and scope of qualifications for licenses and specifically shall fix the qualification of applicants as embalmers, at not less than twelve (12) months' training in an approved or accredited school of embalming and prior credits of not less than four years of high school, two years' training as an apprentice under an embalmer duly licensed in the state of Ohio, and proof to the satisfaction of the board that applicant has actually embalmed not less than twenty-five (25) dead human bodies and the board shall further determine and fix the fees, not to exceed a total aggregate sum of ten dollars to be charged each applicant for application, registration, examination and issuance of, and not to exceed the sum of five dollars per each renewal of licenses of persons desiring to engage in the profession or business of embalming and/or funeral directing. * * *”

Section 1335-3a, General Code, reads as follows :

“From and after the effective date of the act the board shall issue an embalmer's license to any applicant who pays a fee specified by the board not to exceed an aggregate sum of ten (\$10.00) dollars for application, registration, examination and issuance of certificate and license, and not to exceed the sum of five (\$5.00) dollars per year for renewal of such license, and submits evidence verified by oath and satisfactory to the board that :

- “a. Applicant is twenty-one years of age ;
- “b. Applicant is a citizen of the United States ;
- “c. Applicant is of good moral character ;
- “d. Applicant is a graduate of a first grade high school or has completed the equivalent education for regular admission to a college or university accredited by the Ohio department of education.
- “e. Applicant has satisfactorily completed a minimum of two years of academic instruction or the equivalent thereof in semester or quarter hours, in a college or university recognized by the Ohio department of education. Such academic instruction must be taken in advance of course in mortuary science.
- “f. Applicant has registered with the board prior to enrollment in an approved or accredited college of mortuary science recognized by the board, has satisfactorily completed at least twelve (12) months' instruction in a prescribed course in mortuary science as approved by the board, and has presented to the board, a certificate showing the successful completion of said course. Following the mortuary science college training the

applicant shall be given an examination by the board and if successful shall be issued an apprentice embalmer's certificate.

"g. Applicant has, following the completion of the educational requirements outlined herein and previous to serving apprenticeship, certified with the board as an apprentice embalmer, has completed at least one (1) year of apprenticeship under an embalmer duly licensed in the state of Ohio, and has assisted his master embalmer in embalming at least twenty-five (25) dead human bodies. Upon presenting evidence verified by oath to the satisfaction of the board that such apprenticeship has been satisfactorily completed, the holder of an apprentice embalmer's certificate shall be issued an embalmer's license. * * *"

The most noticeable difference between these two sections is that the former sets forth in general terms the qualifications necessary to be fulfilled before an embalmer's license is to be issued, leaving it within the board's discretion to determine the sequence to be followed in meeting those requirements, while in the latter, the amended section specifically provides for a step-by-step procedure in fulfilling the qualifications necessary to acquire the license.

Under Section 1335-3, it had been the practice of the embalmer's board to require the applicant after registering, to serve the two year apprenticeship period and then attend a mortuary school for one year. Under Section 1335-3a, the statute requires that (1) the applicant have two years of college instruction; (2) the applicant register; (3) attend mortuary school for one year; (4) take an examination at the completion of the year's schooling and receive an apprentice embalmers' certificate and (5) serve one year's apprenticeship.

It is my understanding that the applicant in question registered under Section 1335-3 and served one year of the two year required apprenticeship when Section 1335-3a became effective on September 4, 1947. The applicant having had two years of college, reregistered under Section 1335-3a and has just now completed his one year of mortuary school. He now wishes to apply the one year apprenticeship service while registered under Section 1335-3, to meet the one year's apprenticeship required under Section 1335-3a. If this is allowed, his license is to be issued at once. It is over this application that the dispute arises.

It is my opinion that this interpretation cannot be permitted. Unlike the old section, the amended section requires that the year's apprenticeship be served after receiving an apprentice embalmer's certificate. It is not

the purpose of this opinion to inquire into the reason for so providing ; it is sufficient that the statute does so specifically provide.

The applicant does not meet the requirements of either act. Under the original act, he must serve two year's apprenticeship and one year mortuary school. He has served only a year's apprenticeship and, therefore, as to him the original act does not apply. Under the amended act, he must serve the apprenticeship *after* attending mortuary school, and with this requirement he does not comply. In effect, what the applicant is attempting to do here, is to take advantage of both the old and the amended section. He is trying to make the amended section act retroactively in his favor. If the amended section had not set forth a definite procedure to be followed in acquiring the license, the applicant would be on sounder ground. The statute, however, is specific, and leaves nothing to the discretion of the board. The applicant, therefore, must abide by the terms of the statute under which he is now registered.

In specific answer to your question, my opinion is that the applicant must actively serve one year's apprenticeship *after* receiving his apprentice embalmers' certificate before the embalmers' license can be issued to him.

Respectfully,

HERBERT S. DUFFY,
Attorney General.