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**SYLLABUS:**

The official duties of the Ohio state dental board as prescribed under Chapter 4715 of the Revised Code, do not include service as the administrator or proctor of the national board examinations and members of the state dental board acting in such capacity are not entitled to compensation as provided by Section 4715.06 of the Revised Code.

Columbus, Ohio, April 8, 1963

Hon. Norman C. Colebrook  
President, Ohio State  
Dental Board  
322 E. State Street  
Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads, in part, as follows:

“The Council of the National Board of Dental Examiners is an agency of the American Dental Association and was established in 1928. This Council conducts written examinations in subjects relating to dentistry and dental hygiene twice yearly concurrently on a nationwide basis. Most of the candidates for these examinations are students in the various colleges of dentistry. Each candidate who is successful in the examination receives a certificate from the National Board of Dental Examiners. This certificate is accepted presently by about 38 states in lieu of their own theory or written examinations. By virtue of an amendment to the dental law enacted by the Ohio General Assembly in 1961, the Ohio State Dental Board may accept such certificate in lieu of the written or oral tests required by law.

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“The Council of the National Board of Dental Examiners prepares all questions in each of the subjects included in its examination and grades all papers. The Council of National Board of Dental Examiners appoints administrators and proctors to conduct the examinations wherever they are scheduled throughout the country. They are conducted simultaneously in the various testing areas. (In Ohio the examinations are held in Columbus

and Cleveland.) These administrators and proctors receive for their services a per diem which is paid by the Council of National Board of Dental Examiners.

“All examination material including instructions, questions, and answer booklets are shipped by the Council to a Chief Administrator who has already secured a place for holding the examinations in his particular community. At the conclusion of the examination, the material is assembled and returned to the Council.

“The question on which your formal opinion is requested is, ‘whether or not the Ohio State Dental Board, operating as a Board and in official session, can, under the provisions of Chapter 4715, Revised Code of Ohio, be administrators and conduct the National Board examinations as prepared and controlled by the Council, National Board of Dental Examiners, and also whether or not each member of the Ohio State Dental Board can be compensated and reimbursed by the state of Ohio in accordance with the provisions of Section 4715.06, Revised Code.’ ”

Section 4715.09, sub-paragraph (A) of the Revised Code, provides that no person shall practice dentistry until he has obtained a license from the state dental board.

Section 4715.11 of the Revised Code reads as follows:

“An applicant for a license to practice dentistry shall appear before the state dental board at its first examination meeting after the filing of his application, and pass an examination, consisting of practical demonstrations and written or oral tests, or both, in the following subjects: anatomy, physiology, materia medica, therapeutics, metallurgy, histology, pathology, bacteriology, prosthetics, operative dentistry, oral surgery, anaesthetics, orthodontia, diagnosis, preventive dentistry, and such other subjects relating to dentistry as the board may deem necessary to meet changed conditions in dental education.

“In lieu of the written or oral tests required by this section, the state dental board may accept and approve a certificate granted to an applicant as the result of an examination given by the national board of dental examiners, subject to such conditions as the state dental board may prescribe.”

Section 4715.06 of the Revised Code provides in part:

“Each member of the State dental board shall receive fifty dollars for each day actually employed in the *dis-*

*charge of his official duties* and his necessary expenses  
...” (Emphasis added)

Acts of a public officer or board member are performed within the scope of official duties if such acts are done in relation to general matters committed by law to such person’s control or supervision or are governed by a lawful requirement under which a person is acting. *Cooper v. O’Connor*, 107 F. 2d., 207. It is not necessary that the act be specifically prescribed by statute but it must be done in relation to matters committed by law to the control of an officer or administrative board. Services or acts not required by law cannot be classified as “official duties” with respect to the right of compensation.

In *State ex rel. Ferguson*, 149 Ohio St., 555, 558, the Court stated the following rule:

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“moreover, it is a settled rule of construction both in this state and elsewhere that ‘statutes relating to the fees and compensation of public officers must be strictly construed in favor of the government, and such officers are entitled only to what is clearly given by law.’

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There is no doubt that the Section 4715.11 of the Revised Code vests in the state dental board the responsibility for and control of the state dental examination consisting of practical demonstrations and written or oral tests. The acts and duties pertaining thereto are not specified under the law but any act reasonably connected with the required examination would be an official duty entitling the board member to compensation as prescribed by law. It is noted that Section 4715.06, *supra*, relates to “official duties” and not official session or meeting. The legislature apparently recognized that certain duties and responsibilities of the board, such as conducting examinations, would be carried on by the members while not sitting as a board.

Section 4715.11, *supra*, was amended in 1961 (Amended House Bill No. 583, 129 Ohio Laws 1512) to include the provision granting the board the discretion to accept the national board certificate in lieu of the state written or oral examination. As pointed out in your letter the council of national board examiners has full

control and authority over the national examination. The council appoints the administrators and proctors to conduct the examination in the various states and such persons as employees of the council are paid per diem compensation for their services.

The authority granted to the state dental board by Section 4715.11, *supra*, goes only to the approval and acceptance of the national board's certificate. The phrase found in Section 4715.11, *supra*, which reads "subject to such conditions as the state dental board may prescribe" attaches only to the acceptance and credit given to the certificate. It cannot be extended to give an official character to acts performed in relation to the actual conduct of the national examination. As the basis for accepting the national certificate, the state dental board should know whether the coverage of the examination, the conditions under which the examination is taken, and the procedure for grading the examination comply substantially with the requirements and procedures relating to the state examination. It would be beneficial to the board's consideration for the members of the dental board to serve as administrators or proctors of the national examination if appointed, but in doing so they act only in their individual capacity as employees of the national board.

Notice is given to the fact that the vast majority of license applicants have taken the national examination and received a national examination certificate. As a practical consideration, it may well be contended that because so many certificates are submitted for acceptance, the state dental board should have the official capacity to administer and conduct the examination concurrently with the national board and thereby have its members qualify for compensation. However, the present law does not commit any control or supervision to the state dental board with respect to the national examination and the board cannot assume such official duty for itself.

Therefore it is my opinion and you are advised that the official duties of the Ohio State dental board as prescribed under Chapter 4715 of the Revised Code, do not include service as the administrator or proctor of the national board examinations and members of the state dental board acting in such capacity are not entitled

to compensation as provided by Section 4715.06 of the Revised Code.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General