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COSMETOLOGY — LICENSEES — RETIRED FROM PRACTICE MORE THAN THREE YEARS—ENTITLED TO TAKE EXAMINATION FOR RESTORATION OF RESPECTIVE LICENSES WITHOUT MEETING AGE AND EDUCATIONAL REQUIREMENTS—SECTION 1082-5 G. C.

SYLLABUS:

Licensees who have retired from the practice of cosmetology for a period of more than three years are entitled to take an examination for the restoration of their respective licenses, without meeting the age and educational requirements set out in section 1082-5 of the General Code.

Columbus, Ohio, May 26, 1943.

Mrs. Olive M. Sprague, Chairman, State Board of Cosmetology,  
Columbus, Ohio.

Dear Madam:

This will acknowledge receipt of your letter wherein you request my opinion on the question of whether or not persons previously licensed by your Board, and whose licenses have lapsed for three or more years, must meet the educational requirements set out in section 1082-5 of the General Code, before being admitted to examination for restoration of their lapsed licenses.

Section 1082-5 of the General Code, which deals with examinations and qualifications of applicants for licenses, reads as follows:

“On and after 60 days after the appointment of the examining board by the governor, and thereafter at stated periods, the board shall hold an examination for the licensing of operator or manicurist, or shall issue licenses, as the case may be, to any person who shall have made application to the board in proper form, and paid the required fee, and who are not otherwise exempted under this act as provided in this act and who shall be qualified as follows:

(a) Applicants for a manager cosmetologist license, shall receive a license as such without an examination, providing they are not less than twenty-one years of age; have practiced in a beauty parlor or school of cosmetology as operators for at least six months immediately prior to application; be of good moral character, and shall pay the required fee.

(b) Applicants for an operator's license shall not be less than 16 years of age; have a total experience of at least seven hundred and fifty hours of instruction in the majority of the branches of cosmetology or a proportionate number of hours in any lesser group of subjects related to each other in a school of cosmetology; be of good moral character, and shall have an education equivalent to the eighth grade of public school, and shall pay the required fee.

(c) Applicants for a manicurist's license shall not be less than 16 years of age; be of good moral character; and shall have had at least practical training of 150 hours in an approved school of cosmetology and shall pay the required fee. Provided, however, that on and after one year from the passage of this act no person shall receive a license as manager of a beauty parlor, except upon the payment of the required fee; and

(d) Who has not been actually engaged in the practice of manager of a beauty parlor in another state or territory of the United States, or the District of Columbia, for a period of five years; or,

(e) Who has not had a training of at least one thousand hours, in the majority of the branches, in a school of cosmetology approved by the board, and has served as an operator not less than eighteen months in a licensed beauty parlor; or,

(f) Who has served less than three years as an operator in a licensed beauty parlor in which a majority of the occupations of a cosmetologist are practiced."

The provisions of law governing the restoration of lapsed licenses are contained in section 1082-13 of the General Code, which reads in part as follows:

"Any licensed cosmetologist or manicurist who retires from practice may have his or her license restored only upon payment of all lapsed renewal fees; provided, however, that no cosmetologist or manicurist, who has retired from practice more than three years, may have his or her license restored, without examination."

While the above statute provides that any licensed cosmetologist or manicurist who retires from practice must pay all lapsed renewal fees before having his or her license restored, it will be noted that a proviso has been appended thereto which recites that if such retirement from the practice has been for more than three years, an examination must be taken.

With respect to the effect of a proviso in a statute, it is stated in 37 O. Jur., pages 784 and 785 :

“A proviso is generally used in a statute to qualify, limit, or restrain the operation of general terms contained in a previous part of the section or act, or to except or exempt certain specified acts or persons from the operation of the general provisions of the statute.”

In the instant case, the proviso in question not only limits and restrains the operation of the general terms of the above section, but also excepts from the operation of the general provisions which require nothing more than the payment of all lapsed renewal fees, those persons whose licenses have lapsed for more than three years.

It is a fundamental rule of statutory construction that words of a statute which operate as an exception to the general provisions thereof should receive a strict construction. If the words contained in the above proviso are strictly construed, it is difficult to perceive how it can be said that licensees who under the terms thereof may not have their licenses restored without examination, must likewise, before such restoration can be effected, meet the educational requirements set out in section 1082-5 of the General Code. Certainly there is found in the proviso no express words imposing such requirement. If it obtains, it must arise upon implication, and certainly if a strict interpretation is to be accorded the language of the proviso, such implication must be clear and distinct before it can be said that the proviso should be so construed.

Finding no language in the proviso or in the statute which embraces the same, which carries such implication, it seems to me that a conclusion which requires applicants for restoration of licenses who are affected by the proviso, to meet age and educational requirements, as well as pass an examination, is unwarranted.

An enlarged meaning, beyond the import of the words used, should never be given the language contained in an exception to the general provisions of the statute. If the General Assembly had intended that a person previously licensed and who had retired from the practice for more than three years, would, in addition to the taking and passing of an examination, be required to meet the educational requirements prescribed by section 1082-5, supra, it would be expected that that body would have so indicated by an express declaration to that effect.

Furthermore, it must be borne in mind that section 1082-5, which fixes the educational requirements about which you inquire, deals only

with the issuance of original licenses and the qualifications of applicants for such licenses, while section 1082-13 concerns only the renewal of licenses already granted and the restoration of such licenses which have lapsed for failure to pay the renewal fees fixed therein. Therefore, in order to conclude that the language of the proviso contained in the latter section requires an applicant for restoration of license to possess the age and educational requirements set out in the former, it is necessary to adopt the language of the former section without any reference thereto appearing in the latter. This, I feel, would be extending the words of the proviso far beyond the full import thereof.

In arriving at the above conclusion I am not unmindful of an opinion rendered by the then Attorney General on January 6, 1939, Opinions of the Attorney General, 1938, page 2459, wherein it was held:

“Licensees who have retired from the practice of cosmetology for a period of more than three years are not, under the provisions of section 1082-13 of the General Code, entitled to take an examination for the restoration of their respective licenses unless such applicants are able to meet the age and educational requirements imposed by section 1082-5 of the General Code.”

A study of said opinion discloses that the conclusion reached therein was based upon the premise that the age and educational qualifications set out in Section 1082-5 are prerequisites to admission to an examination. With such broad statement I am unable to agree. As pointed out above, the age and educational requirements set out in Section 1082-5 are imposed by said section only in the case of applicants taking an examination for original licenses, and since the General Assembly has in no way indicated that the requirements of said section shall be applicable to the examinations for restoration of licenses, provided for in Section 1082-13, it is my opinion that such requirements should not be considered as a condition precedent to admission to such latter examination.

Nor have I, in arriving at the conclusion herein reached, failed to consider the fact that the above opinion was referred to and accepted without criticism in an opinion rendered by me on February 19, 1940, Opinions of the Attorney General, 1940, page 188.

In regard thereto, it is pointed out that the question now before me was not being considered at the time the 1940 opinion was rendered, and consequently any critical analysis of the 1938 opinion would then have been inappropriate.

In view of the above, and in specific answer to your question, you are

advised that in my opinion licensees who have retired from the practice of cosmetology for a period of more than three years are entitled to take an examination for the restoration of their respective licenses, without meeting the age and educational requirements set out in Section 1082-5 of the General Code.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.