

1703.

NURSE—EXAMINATION FEE—DISPOSITION OF FEE BY STATE MEDICAL BOARD TREASURER—RECOVERY OF FEE BY APPLICANT.

SYLLABUS:

1. *Where an applicant for a license or certificate to practice nursing in the State of Ohio under the provisions of Section 1295-5, General Code, pertaining to persons who were graduated in nursing prior to January 1, 1916, or who were matriculated in an accredited nurses' training school on May 1, 1915, and were required to present their diplomas for registration prior to June 1, 1918, transmits the required fee with her diploma for registration, such fee should be held by the treasury of the state medical board as agent of the applicant pending the determination by the nurses' examining committee of the eligibility of the applicant for such license or certificate. In the event it is determined that the applicant is not entitled to a license or certificate the fee should be returned to the applicant. If it be determined that the applicant is entitled to a license or certificate the fee should be paid into the state treasury.*

2. *Where an applicant for a license to practice nursing in Ohio is required to take the examination provided for in Sections 1295-5 et seq., General Code, and transmits the required fee for such examination with her diploma, such fee should immediately be paid into the state treasury by the treasurer of the state medical board and should not be returned to the applicant in the event no license or certificate is issued.*

3. *Where an applicant under the circumstances referred to in the first branch of this syllabus is entitled to a return of the fee paid by said applicant, which fee has been paid into the state treasury by the treasurer of the state medical board, the applicant may present his or her 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 reimbursement.*

COLUMBUS, OHIO, February 13, 1928.

HON. BERT B. BUCKLEY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent communication, which reads:

"The Treasurer of State has an inquiry from a person who paid a fee of \$10.00 for registration as a nurse, under the Ohio Statutes, which fee was turned into the treasury quite a while ago by the State Medical Board. It appears from the statement of the applicant that she could not be registered, and, therefore, asks for return of her fee which is no longer in possession of the State Medical Board, but was at one time paid into the state treasury under a former administration.

The Treasurer of State knows that *he can make no reimbursement or refund* from monies paid into the state treasury without authority of law. However, this person *may have a claim* which should come before the Sundries Claims Board for reimbursement by the Legislature. The question then arises whether under the nurse registration sections of the law is the applicant entitled to a return of the fee where registration is not accomplished, or, on the other hand, does the payment of the fee automatically go into the treasury regardless of affirmative or negative action by the State Medical Board?

Certain sections of the code have been construed by the Attorneys General that no refund occurs because of the particular reading under which certain licenses are granted. What would be the rule under the sections of the code covering registration of nurses as to whether the applicant was entitled to a refund where registration had not been accomplished?"

The Ohio law relating to the practice of nursing and the licensing of nurses is found in Sections 1295-1 to 1295-20, inclusive, of the General Code. Section 1295-5, General Code, relates to the qualifications and procedure to entitle an applicant to a certificate or license to practice nursing. Said section provides:

"On and after January 1, 1916, no person shall practice nursing as a registered nurse in this state without first complying with the requirements of this act (G. C. 1295-1, et seq.). All graduates in nursing shall either personally or by letter or proxy, present their diplomas to the nurses' examining committee for verification. Accompanying such diploma the applicant shall file an affidavit, duly attested, stating that the applicant is the person named in the diploma and is the lawful possessor of the same. The applicant shall state date of birth and the actual time spent in the study of nursing. If the committee shall find the diploma to be genuine and from a nurses' training school in good standing, as defined by the state medical board, and connected with a hospital or sanatorium, and the person named therein to be the person holding and presenting the same, and that said person has paid the fee as hereinafter provided for the examination of applicants, the committee shall issue a certificate to that effect signed by its secretary and chief examiner; such certificate, when left with the probate judge for record as hereinafter required, shall be conclusive evidence that its owner is entitled to practice nursing as a registered nurse in this state.

All other persons desiring to engage in such practice in this state, shall apply to the nurses' examining committee for a certificate, and submit to the examination hereinafter provided except that all students who were on May 1, 1915, matriculated in a training school for nurses located in the State of Ohio, recognized by the State Medical Board of Ohio, and who shall have graduated subsequent to May 1, 1915, and who shall file their diploma for registration prior to June 1, 1918, shall receive certificate as heretofore provided. The applicant shall file with secretary a written application, under oath, on a form prescribed by the State Medical Board, and provide proof that said applicant is more than twenty-one years of age and of good moral character. The applicant shall file documentary evidence that before matriculating in a training school for nurses, said applicant received an education equivalent to that required for completion of the first year of high school course of the first grade in this state, of four units of high school work, as defined in the school laws of Ohio, and evaluated by the entrance examiner of the State Medical Board in the same manner as provided in Section 1270 of the General Code of Ohio, and a diploma of graduation from a training school in good standing, as defined by the State Medical Board and connected with a hospital or sanatorium. At the time of application the applicant shall present such diploma with the affidavit that said applicant is the person named therein and is the lawful possessor thereof, stating date of birth, residence, the training school or schools at which said applicant obtained education and training in nursing, the time spent in each, the time spent in the study and training of nursing, and such other

facts as the State Medical Board required. If engaged in the practice of nursing, the affidavit shall state the period during which and the place where said nurse has been so engaged."

The above quoted section divides the applicants for nurses' certificates into three groups or classes: First, those who were graduates in nursing at the time the act went into effect, to-wit; January 1, 1916; second, those who were on May 1, 1915, matriculated in a nurses' training school located in Ohio and recognized by the State Medical Board, who graduated after May 1, 1915, and who filed their diplomas for registration prior to June 1, 1918; and third, all others, that is, all graduate nurses who graduated after January 1, 1916, and who do not fall within the second group or class.

Your communication does not state facts from which it can be determined within which of the three groups or classes above referred to the applicant falls. I shall, therefore, discuss each of the groups in the order above mentioned and cover all of said groups in this opinion.

The first group or class above referred to is limited to persons who were graduates in nursing at the date of the going into effect of the act (Sections 1295-1 to 1295-20, inclusive, General Code), to-wit, January 1, 1916. In order to entitle a person falling within said class to a certificate, it is necessary for the applicant to present his or her diploma to the nurses' examining committee for verification and submit with such diploma an affidavit, stating that the applicant is the person named in the diploma and is the lawful possessor of the same. The section further provides that the applicant shall state the date of birth and the actual time spent in the study of nursing. If the committee finds the diploma to be genuine and from a nurses' training school in good standing, as defined by the State Medical Board, and connected with a hospital or sanatorium, and the person named therein to be the person holding and presenting the same, and that said person has paid the fee, as provided by law, for the examination of applicants, the committee shall issue a certificate to that effect, signed by its secretary and chief examiner.

Two things are necessary to entitle an applicant within the first class to a certificate; viz:

1. A diploma supported by an affidavit and other information, and
2. The payment of a fee required of applicants for examination.

The fee referred to is the fee mentioned in Section 1295-11, General Code, which provides that each applicant for a certificate to practice nursing, as a registered nurse in this state, shall pay a fee of not to exceed ten dollars for examination, which fee shall be fixed by the State Medical Board. Both of the above requirements must be met in order to entitle the applicant to a certificate.

However, it seems to me that the payment of the fee is not required coincident with the presentation of the diploma, affidavit and other information, but is rather a condition subsequent to the examination of the diploma, affidavit and other information by the nurses' examining committee and a condition precedent to the issuing of the certificate. In other words, I am of the opinion that the fee required of applicants falling within the first class is in the same category as the fee required by Section 1270, General Code, for the issuance of a preliminary education certificate to applicants for a certificate to practice medicine.

Under date of October 15, 1917, this department rendered an opinion to Hon. A. V. Donahey, at that time Auditor of State, upon the question of the returnability of various fees paid by applicants for certificates to practice medicine and nursing.

This opinion is reported in Opinions, Attorney General, 1917, Volume 2, page 1889. In the opinion it was held that the fee of \$3.00 provided for in Section 1270, General Code, for the issuance of a preliminary education certificate is not properly payable until after the entrance examiner is satisfied of the educational qualifications of the applicant. It was held in that opinion that when such fee is enclosed with the application the same is to be held by the medical board or the officials thereof as the agent of the applicant, subject to be returned to him at his request, in case he fails to qualify for the preliminary education certificate. On page 1894 of that opinion it was stated:

“Preliminary educational qualifications are provided for in Section 1270, G. C., above quoted, and no fee is required of the applicant until the entrance examiner is satisfied either that such applicant has a certificate showing the qualifications mentioned in said section, or has taken an examination. Then the statute provides:

‘If the entrance examiner finds that the preliminary examination of an applicant is sufficient, he shall, upon payment to the treasurer of the State Medical Board of a fee of \$3.00, issue a certificate thereof which shall be attested by the secretary of the State Medical Board.’

That is the entrance examiner must first find that the applicant has the necessary preliminary education or must give such applicant an examination in the branches as are required for graduation from a first class high school of this state, and if the examiner finds that the applicant has the educational qualifications required, or if such applicant passes the examination given by the entrance examiner, then such entrance examiner shall issue such applicant a certificate, but not until the fee of \$3.00 has been paid to the treasurer of the State Medical Board.

I am informed that it frequently happens that the fee of three dollars is enclosed with the application for a preliminary examination. This procedure is not in strict compliance with the statute and if same is held by the board or the officials thereof, it is so held only as agent of the applicant, subject to be returned to him at his request, in case he fails to qualify for the preliminary education certificate, or to be received by the board officially, if such applicant qualifies, and when the preliminary educational certificate is furnished to such applicant.

So that, answering your question, subdivision A, I advise you that no fee being properly payable until after the entrance examiner is satisfied of the educational qualifications of the applicant, none could be returned which is properly paid. If, however, the officials of the board are holding any fee simply as agents of the applicant, such fees are returnable on request in case the applicant fails to qualify educationally.”

In my opinion, the fee required of an applicant for a nurses' certificate who falls within the first group or class above referred to, falls within the same class as the fee for the preliminary education certificate provided for in Section 1270, General Code, and if such fee accompanies the diploma, affidavit and other information required of applicants in such class it should be held by the treasurer of the State Medical Board, as the agent of the applicant, until it is determined whether or not such applicant is entitled to a certificate to practice nursing. If the committee determines that the applicant is not entitled to a certificate, the fee should be

returned. If, on the other hand, the committee determines that the applicant is entitled to a certificate the fee should be turned into the state treasury.

What has been said above as to the first group or class applies with equal force to applicants falling within the second group, that is, those who were matriculated in a recognized nurses' training school located in Ohio on May 1, 1915, who graduated after said date and who filed their diplomas for registration prior to June 1, 1918.

As to the third class, to-wit, all other applicants who do not come within the first and second groups above mentioned, Section 1295-5, General Code, requires such applicants to file with the secretary a written application, under oath, on a form prescribed by the State Medical Board, and provide proof that such applicant is more than twenty-one years of age and of good moral character. The applicant is also required to file documentary evidence that before matriculating in a training school for nurses he or she received an education equivalent to that required for completion of the first year of a high school course of a first grade high school in this state, of four units of high school work, as defined in the school laws of Ohio and evaluated by the entrance examiner of the State Medical Board in the same manner as provided in Section 1270, General Code, and a diploma of graduation from a training school in good standing, as defined by the State Medical Board, and connected with a hospital or sanatorium. The applicant is also required at the same time to present his or her diploma with an affidavit that the applicant is the person named therein and is the lawful possessor thereof, stating date of birth, residence, the training school or schools at which said applicant obtained education and training in nursing, and such other facts as the State Medical Board requires.

Section 1295-5, General Code, provides:

"If the committee finds the applicant possesses the credentials necessary for admission to the examination, that the diploma is genuine and was granted by a training school for nurses in good standing, as defined by the State Medical Board and connected with a hospital or sanatorium and that the person named in the diploma is the person holding and presenting it and is of good moral character, the committee shall admit the applicant to an examination."

Section 1295-11, General Code, provides:

"Each applicant for a certificate to practice nursing as a registered nurse in this state shall pay a fee of not to exceed ten dollars for examination, which fees shall be fixed by the State Medical Board. The fees for examination shall be paid in advance to the treasurer of the State Medical Board and by him paid into the State Treasury to the credit of a fund for the use of the said board in the enforcement of this act."

A provision similar to that contained in Section 1295-11, General Code, is found in Section 1277, General Code, which provides for the fee to be paid by an applicant for a certificate to practice medicine or surgery in this state. Section 1277, General Code, provides:

"Each applicant for a certificate to practice medicine or surgery in this state shall pay a fee of twenty-five dollars for an examination. On failure to pass such examination the fee shall not be returned to the applicant, but

within a year after such failure he may present himself and be again examined without the payment of an additional fee. All fees for examination shall be paid in advance to the treasurer of the board and by him paid into the state treasury to the credit of a fund for the use of the State Medical Board."

In the 1917 opinion above referred to it was held by this department that the fee required of an applicant under Section 1277, General Code, was not returnable to the applicant on failure to pass the final examinations.

On page 1895 of the opinion it was said:

"Coming now to subdivision B of your second question, that is, if a fee may be refunded upon the failure of the applicant to pass the final examination, nothing it seems to me could be clearer than the language of Section 1277, G. C., which provides that on failure to pass such examination, *the fee shall not be* returned to the applicant, but within a year after such failure he may present himself and be again examined without the payment of an additional fee. Then said section further provides that all fees for examination shall be paid in advance to the treasurer of the board and by him paid into the state treasury to the credit of a fund for the use of the State Medical Board, and no provision being made for a return of said fees, it is, as above stated, most clear to me that there cannot be a refunder upon a failure to pass a final examination."

While Section 1295-11, General Code, does not contain a provision that the fee shall not be returned to the applicant, on failure to pass the examination, but that within a year after failure to pass the examination he may present himself and be again examined, without the payment of an additional fee, it does provide that the *fees for examination* shall be paid in advance to the treasurer of the State Medical Board and by him paid into the state treasury to the credit of the fund, for the use of the said board in the enforcement of the act, which is similar to the provision contained in Section 1277, General Code.

I am therefore of the opinion that the fee for examination paid by an applicant for a nurses' certificate under Section 1295-11, General Code, is not returnable to the applicant at any time.

Summarizing the conclusions above reached, it is my opinion that if the applicant referred to in your communication filed her diploma for registration and sought to be licensed under the provisions of Section 1295-5, General Code, pertaining to the two groups or classes first above mentioned, that is, those who were graduated in nursing prior to January 1, 1916, and those who were matriculated in an accredited nurses' training school on May 1, 1915, and were required to present their diplomas for registration prior to June 1, 1918, and sent the fee of \$10.00 along with her diploma, the fee should have been held by the treasurer of the State Medical Board, as her agent, pending the determination by the nurses' examining committee of her eligibility for a license or certificate and should not have been paid into the state treasury. Upon the determination by said committee that she was ineligible for such license or certificate, the fee should have been returned to her by said treasurer. If, on the other hand, the applicant sought a license under the provisions of Sections 1295-5, et seq., General Code, pertaining to the third group or class, that is, those who are required to take an examination, the fee may not be returned to her and was properly paid into the state treasury by the treasurer of the State Medical Board.

The fee having been paid into the state treasury, it remains to point out the

method in which the same may be withdrawn from the treasury for the purpose of reimbursing the applicant in the event it appears that she is entitled to reimbursement. As you suggest in your communication, and as provided by Section 22 of Article II of the Ohio Constitution, no money may be withdrawn from the state treasury except in pursuance of a specific appropriation made by law. I would therefore recommend that, in the event the applicant feels that in the light of what has been said above she is entitled to reimbursement, she present her claim to the Sundry Claims Board for action by the next Legislature if the Sundry Claims Board determines that she is entitled to relief.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1704.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE OHIO RIVER EDISON COAL COMPANY FOR THE CONSTRUCTION OF AN UNDERPASS ACROSS STATE HIGHWAY NO. 378 IN KNOX TOWNSHIP, JEFFERSON COUNTY, OHIO.

COLUMBUS, OHIO, February 13, 1928.

HON. GEORGE F. SHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a contract between the Ohio River Edison Coal Company as first party, and the State of Ohio, acting by and through George F. Schlesinger, as Director of Highways, as second party, providing for the construction of an underpass across State Highway No. 378 in Knox Township, Jefferson County, Ohio.

I have carefully examined the contents of said contract and finding the same correct in form and legal, and, further, that the same protects the interests of the state, I am hereby approving the same.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1705.

STATE TREASURER—SECURITIES DEPOSITED IN TREASURY UNDER SECTION 710-150, GENERAL CODE—LIABILITY IN CASE OF LOSS.

SYLLABUS:

The state will not be liable should securities deposited with the state treasurer, under Section 710-150, General Code, be lost through burglary, holdup, theft or otherwise, but in such case the liability for the loss of such securities will be one against the state treasurer and the sureties on his official bond.

COLUMBUS, OHIO, February 13, 1928.

HON. BERT B. BUCKLEY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, reading as follows: