

shall be guilty of murder in the first degree, and shall be punished as therein provided. Section 12403, General Code, then provides:

“Whoever, purposely and maliciously kills another, except in the manner described in the next three preceding sections, is guilty of murder in the second degree and shall be imprisoned in the penitentiary during life.”

Manifestly the provisions of sections 12400 to 12404, inclusive, divide “homicide” into three classes, viz., murder in the first degree, murder in the second degree, and manslaughter. Therefore, a person convicted of either of the first two grades stands convicted of murder; and one convicted of the third grade, manslaughter, is not convicted of murder.

It will be noted that the crime of manslaughter is not mentioned in section 13452-2, General Code.

Therefore, in specific answer to your question, it follows that where a person pleads guilty to or is convicted of the crime of manslaughter, he may be put on probation under authority of the provisions of section 13452-1, General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3337.

EMBALMING LAW—NUMBER AND PLACE OF MEETINGS EACH YEAR OF EXAMINING BOARD—FIRST REQUIREMENT OF PERSON DESIRING TO ENGAGE IN PRACTICE—PRACTICAL EXPERIENCE MAY PRECEDE APPLICATION FOR REGISTRATION—FILING OF APPLICATION FOR LICENSE.

*SYLLABUS:*

1. *Under the provisions of Sections 1338 and 1342, General Code, the state board of embalming examiners of Ohio is required to hold two meetings each year for the examination of applicants for license at such time as the board may direct, one of which shall be held in Columbus and the other of which shall be held either at Columbus or such other place as the board may direct.*

2. *The first thing that a person must do to become engaged in the practice of embalming as a licensed embalmer in this state is file an application for registration, which application must be filed at least thirty days before the date of the examination of the applicant.*

3. *Such person may enter upon the service of the two years of practical experience provided by law before filing his application for registration.*

4. *Section 1342, General Code, contains no provision as to the time that must elapse between the time of filing application for registration and the time of making application for license, but only requires that the filing of the application for registration precede the filing of the application for license.*

5. *Apprenticeship may be legally certified without the applicant first making application for registration.*

COLUMBUS, OHIO, June 18, 1931.

*State Board of Embalming Examiners, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date is as follows:

"I am requested by our Board to write you for a ruling on the following two paragraphs as they appear in our embalming law. The first is under Sec. 1338 where it states as follows:

'For the examination of applicants for license, two or more meetings shall be held in each year at such time and place as the Board may direct.'

Then in Sec. 1342 the last paragraph states as follows:

'The State Board of Embalming Examiners shall hold at Columbus, Ohio, not less than one nor more than two examinations in each calendar year.'

What we would like to know, inasmuch as these two rules seem to conflict with each other, which one should we follow?

I am also requested to ask you for an opinion on Sec. 1342 as per the following questions:

(1) What is the first thing a person must do to become engaged in this business?

(2) Must the first thing be an application for registration or may one immediately become an apprentice before becoming registered?

(3) What time, according to law, elapses from the time of registration to the time of making application for license?

(4) Can apprenticeship be legally certified according to law without the applicant first making application for registration?

May I further ask if the enclosed prepared registration blank is legally consistent with this Sec. 1342.

I would thank you for an early opinion as our Board recently voted to hold only one examination in each calendar year which has seemed to meet with a great deal of opposition, due to the fact that at present there are many students who are completing their work in embalming schools with the anticipation of taking an examination in July of this year as planned by a ruling of our Board according to the minutes of July 9th, 1929, setting, in advance, various examination dates. Should we be obliged, by your opinion, to hold an examination in July, taking into consideration the amount of time it takes to prepare for one, it would naturally be necessary for us to commence plans for same."

Considering first your inquiry with respect to the provisions of Sections 1338 and 1342, General Code, which you state seem to be in conflict and which you quote in your letter, it is my view that this conflict is more apparent than real. It is a well established rule of statutory construction that full force and effect shall be given to all the language used by the legislature with the view of reconciling, if possible, provisions which may appear to be conflicting. Having this principle in mind, Section 1338, General Code, requires that there be held at least two meetings each year for the examination of applicants for license. If this were the only provision with reference to holding meetings for the examination of applicants for license, either or both of these annual meetings could be held at such place as your board may direct. Section 1342, however, places a limitation in this respect upon the provisions of Section 1338 by requiring that at least one of these examinations be held at Columbus, leaving the place where the other examination

is to be held open for the determination of your board. Reconciling these two sections, therefore, with a view of effectuating the language of each, it is my opinion in answer to what I shall consider as your first question that:

1. Under the provisions of Section 1338 and 1342, General Code, the state board of embalming examiners of Ohio is required to hold two meetings each year for the examination of applicants for license at such time as the board may direct, one of which shall be held in Columbus and the other of which shall be held either at Columbus or such other place as the board may direct.

Coming now to your questions predicated upon other provisions of Section 1342, General Code, this section provides as follows:

“Every person desiring to engage in the practice of embalming or the preparation of the dead for burial, cremation or transportation, in the state of Ohio, shall make a written application to the state board of embalming examiners for registration, giving such information as the said board may, by regulation, require for such registration. Each application must be accompanied by a fee of one dollar with the certificates of three reputable citizens, one of whom shall be a licensed embalmer, that the proposed applicant is of good moral character and stating his age and general education which shall be a high school education or its equivalent. If the said board shall find the facts set forth in the application to be true, the said board shall issue to said applicant a certificate of registration.

Before a registered applicant can apply for and take an examination in the practice of embalming or preparing for burial, cremation or transportation, the body of any dead person in the state of Ohio, said applicant shall have completed to the satisfaction and approval of the said board, a course consisting of at least twenty-six weeks of studies in the science of embalming, disinfection and sanitation in a regular school of embalming, recognized by said board and shall have had at least two years of practical experience under a licensed embalmer in this state, during which time he or she shall have embalmed, arterially, at least twenty-five dead adult human bodies.

All applications for a license to practice embalming and the preparation of the dead for burial, cremation or transportation in this state, must be made to the state board of embalming examiners in writing and contain the name, age, residence and person or persons with whom employed, the name of the school attended together with a certificate from two reputable citizens that the applicant is of legal age and of good moral character, also a certificate under oath when required by the said board from the president or dean of the embalming school or college he or she has attended, that the applicant has complied with the requirements of said school or college and a certificate under oath, when required by said board, from the licensed embalmer under whom he or she has worked as an apprentice, that he or she has complied with the requirements of apprenticeship as set forth in this section.

Each application must be accompanied by a fee of ten dollars and the certificate of registration.

If after the state board of embalming examiners are satisfied that the applicant has qualified as set forth in this section, the said board shall cause the said applicant to appear before them and be examined in the subjects as set forth in the preceding section and he must pass said

examination with an average grade of not less than seventy-five per cent. The state board of embalming examiners shall hold at Columbus, Ohio, not less than one nor more than two examinations in each calendar year."

A consideration of the foregoing section in its entirety would seem to lead to the conclusion that the first thing a person must do to engage in the practice of embalming shall consist of the making of a written application for registration, since the section provides in the first sentence that every person desiring to engage in such practice shall make such application. In the second paragraph of this section, the requirements as to apprenticeship are set forth. The third paragraph provides for the application to be made to your board to take an examination. The provision in the second paragraph that "Before a registered applicant can apply for and take an examination" he shall have the practical experience therein set forth, clearly indicates that the registration must precede the application for the examination. It may be urged that the legislative intent in the enactment of this section was that all persons desiring to become licensed embalmers must register prior to serving the two years' apprenticeship required by the law. This would, of course, enable your board to keep check upon those serving as apprentices and would appear to be a logical basis for the requirement as to registration.

The statute, however, contains no express provision as to when applicants for examination shall be registered with reference to the time when such applicants shall file their application except that such registration shall precede the application. There is no express provision to the effect that before a person desiring to become licensed as an embalmer may be permitted to commence his service as an apprentice under the law he must be registered as an apprentice with your board. In view of the absence of definite provision in this regard, it becomes necessary to consider the administrative practice that has been established by your board under the provisions of this section of the law which have been in force and effect in their present form since 1917.

In the case of *State, ex rel. v. Brown*, 121 O. S. 73, 75, 76, the Supreme Court said:

"It has been held in this state that 'administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do.' *Industrial Commission v. Brown*, 92 Ohio St., 309, 311, 110 N. E., 744, 745 (L. R. A., 1916B, 1277). See, also, 36 Cyc. 1140 and 25 Ruling Case Law, 1043, and cases cited."

Section 1342, General Code, here under consideration, has been interpreted for the past fourteen years as not requiring a person seeking to become a registered embalmer to register prior to the service of his time as an apprentice. It has been established by your board that application for registration must be on file with the secretary of your board at least thirty days previous to the examination. In an opinion of this office appearing in *Opinions of the Attorney General for 1917*, Vol. II, p. 1503, there is approved a form of application for registration under Section 1342, General Code. This form contains at the bottom thereof the following:

"Note.—This application according to a rule of the board, must be on file with the Secretary of the State Board of Embalming Examiners at least thirty days previous to the examination."

In view of the foregoing, it is my opinion in specific answer to the remainder of your questions that:

2. The first thing that a person must do to become engaged in the practice of embalming as a licensed embalmer in this state is file an application for registration, which application must be filed at least thirty days before the date of the examination of the applicant.

3. Such person may enter upon the service of the two years of practical experience provided by law before filing his application for registration.

4. Section 1342, General Code, contains no provision as to the time that must elapse between the time of filing application for registration and the time of making application for license, but only requires that the filing of the application for registration precede the filing of the application for license.

5. Apprenticeship may be legally certified without the applicant first making application for registration.

In view of the foregoing conclusions, it is unnecessary to comment upon the proposed form of application for registration which you have submitted, since in my opinion, it is unnecessary to change the form heretofore approved by this office.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3338.

APPROVAL, BONDS OF CITY OF CUYAHOGA FALLS, SUMMIT COUNTY, OHIO—\$12,000.00.

COLUMBUS, OHIO, June 18, 1931.

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

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3339.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS CHIEF OF THE DIVISION OF VITAL STATISTICS—IRVA C. PLUMMER.

COLUMBUS, OHIO, June 18, 1931.

HON. HARRY G. SOUTHARD, *Director of Health, Columbus, Ohio.*

DEAR SIR:—You have submitted a form of bond in the penal sum of \$5,000.00, conditioned to cover the faithful performance of the duties of Irva C. Plummer, as Chief of the Division of Vital Statistics of your department. Said bond is given under the provisions of Section 154-14, of the General Code, and it will therefore be necessary to have the approval of the Governor.

It is my opinion that the form of said bond is legal and when properly executed and approved, will constitute a valid bond.

I have endorsed my approval thereon as to form, and return the same herewith.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*