

of Ohio by W. H. Howell Estate, conveying to the State of Ohio, for the purposes therein stated, certain tracts of land in Jefferson Township, Jackson County, Ohio.

By the above grants there are conveyed to the State of Ohio, certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters or water courses passing through and over said lands.

Upon examination of the above instruments, I find that the same have been executed and acknowledged by the grantor in the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by approval endorsed thereon, which is herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2750.

DENTISTS—LICENSED—SECTION 1323-1, G. C. PROVIDES LICENSED DENTISTS SHALL REGISTER AND PAY FEE BEFORE MARCH 1, EACH YEAR—FAILURE—PENALTY—AFTER NOTICE LICENSE SUSPENDED WITHOUT HEARING REQUIRED BY SECTION 1326, G. C.

SYLLABUS:

1. *The provisions of Section 1323-1, General Code, that all licensed dentists shall register and pay the fee therefor "by the first day of March" of each year, requires that such registrations and fees be received in the office of the secretary of the Ohio State Dental Board before the first day of March of each year.*

2. *In the event of the failure of licensed dentists to comply with the provisions of Section 1323-1, General Code, with respect to annual renewal of their licenses and payment of fee therefor as therein provided, the State Dental Board, after having served such licensees with notices required by such section, should take formal action on or after March 1 of each year to suspend the licenses of such licensees without the hearing required by Section 1326, General Code.*

COLUMBUS, OHIO, July 21, 1938

Ohio State Dental Board, 1553½ North Fourth Street, Columbus, Ohio.

GENTLEMEN: Your letter of recent date reads as follows:

“In the administration of the General Code of Ohio regulating the practice of Dentistry in Ohio, particularly in regard to annual registration, several questions have arisen concerning which the Ohio State Dental Board respectfully requests your opinion.

Section 1323-1 of the General Code provides that all dentists must register with the Secretary's office on or before January first of each year, and pay an annual fee of \$3. Further, that the Secretary of the Ohio State Dental Board shall send a notice to each and every dentist who holds a license to practice dentistry in the State of Ohio, whether a resident or not, at his last address, that his annual registration is due on or before the first day of January, and that his license to practice in Ohio shall be suspended if the fee is not paid by the first day of March of the same year. Further, the Secretary of the Ohio State Dental Board shall at least thirty days before the first day of March, send a second notice to each and every dentist who has failed to comply with the first notice.

The first question that arises is what is meant by the phrase ‘by the first day of March.’ Does the word ‘by’ as herein used, mean ‘on’ or ‘before’ the first day of March? Does this mean at the close of business on the last day of February, or can registrations be accepted March first? If registrations can be accepted on March first, does that include any that might be brought in personally on that date, or only those that are postmarked prior to March first?

The wording of the statute is that the ‘license *shall* be suspended if the fee is not paid by the first day of March.’ Does this mean that the license of the delinquent becomes automatically suspended on this date without formal action of the Ohio State Dental Board, or does it mean that proceedings toward the hearing for the suspension of the delinquent license shall be instituted by the Ohio State Dental Board on that date, as provided in Section 1326 G. C.?

Section 1326 of the General Code provides that no action to revoke or suspend a license shall be taken until the accused has been furnished a statement of the charges against him and notice of time and place of hearing thereof at least twenty days prior to date of hearing. Is this procedure required for suspension of a license because of failure to register as provided in Section 1323-1, G. C.?

If the proceedings in suspension, as defined in Section 1326, G. C., must be followed, can the copy of the charges and

notice of time and place of hearing be mailed to the delinquent at the same time and with the second notice 'least thirty days before the first of March'? Would such procedure comply with the requirements of Section 1326 G. C., and permit the hearing for suspension and final action on March first?

Section 1323-1 G. C. provides that the Secretary of the Ohio State Dental Board shall send a notice to each and every dentist, whether a resident or not, 'at his last address.' Also, that a second notice be sent 'at least thirty days before the first of March' to each and every dentist failing to comply with the first notice. The questions that arise here are: What is meant by 'at his last address'; also, where shall the second notice be sent? Does 'last address' as herein used mean the last known address as revealed by the records of the Ohio State Dental Board, and does the same apply to the 'second notice'?

Past experience reveals that many registrations and fees are received after March first, and even after the notices of time and place of hearing for suspension have been mailed. What disposition should be made of these fees received during the interim between the time the notices of hearing are mailed, and the date of the hearing? Should the registration and fee be accepted and proceedings in suspension dropped against those sending in their registration after the notices of time and place of hearing for suspension have been mailed, or should the registration and fee be returned to the delinquent licensee by the Ohio State Dental Board, and the hearing for suspension held in accordance with the notices mailed to such delinquents?

Should the notices of time and place of hearing for suspension be mailed to the last known address by Registered Mail, Return Receipt Requested, or will first class mail, supported by the records of the Ohio State Dental Board showing the name and last known address of the licensee be sufficient?

Summarizing, the Ohio State Dental Board respectfully requests your opinion on the following questions:

1. What is meant 'by the first day of March' as used in Section 1323-1 of the General Code?
2. Does the wording 'license shall be suspended if the fee is not paid by the first day of March' mean that the suspension becomes automatic without any formal action of the Ohio State Dental Board? In other words, is Section 1323-1 G. C. in this respect self-executing?
3. Does the procedure for suspension as defined in Section 1326 G. C. apply to the provisions of Section 1323-1 G. C. relat-

ing to suspension of licenses because of failure to register?

4. What is meant by 'last address' as relates to place where notices of registration are to be mailed, and where is second notice 'thirty days before March first' to be mailed?

5. If the procedure outlined in Section 1326 G. C. must be followed, is it necessary to wait until March first to mail notices of time and place of hearing, or can they be mailed with the 'second notice thirty days before the first of March'?

6. What disposition shall be made of the registration fees that may be received after March first, but before time of hearing?

7. If notices of time and place of hearing are required, is it necessary to mail them by Registered Mail, Return Receipt Requested, or is first class postage sufficient?

Your formal opinion on the foregoing questions is respectfully requested."

Section 1323-1, General Code, provides :

"All persons who hereafter may obtain a license to practice dentistry in the State of Ohio and all persons who are at the time of the taking effect of this act licensed to practice dentistry in the State of Ohio, shall on or before the first day of January, 1936, and on or before the first day of January annually thereafter, be required to register, on the form prescribed by the board and furnished by the secretary, his name, address, license number, and such other reasonable information as the board may deem necessary, and pay an annual registration fee of three dollars to the secretary of the Ohio State Dental Board. Provided it shall be the duty of the secretary of the Ohio State Dental Board to send a notice to each and every dentist who holds a license to practice dentistry in the State of Ohio, whether a resident or not, at his last address, that his annual registration fee is due on or before the first day of January as herein provided, and that his license to practice dentistry in this state shall be suspended if the fee is not paid by the first day of March of the same year; providing, however, that the secretary of the Ohio State Dental Board shall, at least thirty days previous to the first day of March, send a second notice to each and every dentist failing to comply with the first notice. Any dentist whose license has been suspended under this section may be reinstated by the payment of his annual registration fee and in addition thereto ten dollars to cover costs of reinstatement; excepting that to any dentist licensed

under the provisions of this act who desires to temporarily retire from practice, and who has given the Ohio State Dental Board notice in writing to that effect, the board shall grant such a retirement, provided only that at that time all previous registration fees and additional costs of reinstatement shall have been paid. It shall be the duty of each and every dentist licensed to practice in the State of Ohio, whether a resident or not, to notify the secretary of the Ohio State Dental Board in writing of any change in his office address or employment within ten days after such change shall have taken place. On the first day of July, 1936, and on the first day of July annually thereafter following each registration, the secretary of the board shall issue a printed roster of the names and addresses so registered, a copy of which shall be mailed to each registrant at his last known address."

Your questions will be considered in the order presented.

The provision that annual registrations and the statutory fee therefor shall be paid "by the first day of March" requires a consideration of the meaning of the word "by" when used as a time limitation. Under such circumstances, the word "by" should be construed as meaning "before." In the early case of *Richardson vs. Ford*, 14 Ill. 333, it was held that a contract for a mill to be completed "by November" excludes the whole of that month. To the same effect is the case of *McBeam vs. Kinnear*, 23 O. R. 313, holding that where under a certain contract, work was to be commenced "by November 31st," the contract was read as meaning that the work was to be commenced on November 30th.

It is accordingly my opinion that the provision of Section 1323-1, General Code, that all licensed dentists shall register and pay the fee therefor "by the first day of March" of each year, requires that such registrations and fees be received in the office of the secretary of the Ohio State Dental Board before the first day of March of each year.

I shall consider your second and third questions together as they are interrelated. Section 1323-1, *supra*, relating to the suspension of the license to practice dentistry in this state on account of the failure to register annually and pay the fee therefor, at the outset imposes this duty upon all licensed dentists. This requirement is followed by a proviso requiring two notices to be sent prior to suspension for failure to comply with such section. In the enactment of this section, the General Assembly has further provided for reinstatement after suspension by payment of the fee and an additional fee of ten dollars to cover costs of reinstatement.

Section 1325, General Code, empowers the State Dental Board to

revoke or suspend a license to practice dentistry for numerous unlawful and unethical practices, as therein set forth, which the General Assembly has seen fit to prohibit. The following section, being Section 1326, General Code, provides that "no action to revoke or suspend a license shall be taken until the accused has been furnished a statement of the charges against him and notice of the time and place of hearing thereof." This section further provides for the service of charges upon the licensee, the conduct of the hearing, etc. It should be here noted that no purpose would be served by furnishing the licensee with a statement of the charges when the sole charge is that he has failed to renew his license and under the statute two notices have already been mailed to him. There would appear to be nothing to submit or determine at any hearing under such circumstances as the sole issue is failure to renew a license and where the licensee has failed so to do nothing could be submitted or argued at such hearing nor could the board invoke any discretionary functions since Section 1323-1, supra, in mandatory language provides that under such circumstances the license shall be suspended. It is well established that in construing statutes the courts will give consideration to the purpose to be subserved by the legislature in their enactment and the indication would accordingly seem clear that Section 1326, requiring a notice and hearing, has reference only to Section 1325, General Code, providing for revocation or suspension of a license based upon the licensee having committed some offense therein specified.

It is not, however, entirely necessary to resolve this question upon consideration of the foregoing discussion. The statutes relating to the practice of optometry likewise contain provisions with respect to revocation or suspension of an optometrist's license based upon certain misconduct, pursuant to notice and hearing. See Section 1295-31, General Code. The Optometry Licensing Law also contains similar provisions to the Dental Practice Act with respect to the loss of the right to practice on account of failing to register and pay the annual fee therefor. See Section 1295-30, General Code. This last mentioned section was under consideration in an opinion of this office appearing in Opinions of the Attorney General for 1932, Vol. I, page 510. While the question then under consideration was not as to the requirement for hearing in the event of revocation based upon failure to pay the annual renewal fee, in the body of the opinion, it seemed to be recognized by the then Attorney General that the Optometry Law contained no such requirement. After quoting the pertinent provisions of Section 1295-30, General Code, the then Attorney General said at page 512:

"Your letter states that the optometrists were notified prior to the revocation of their licenses. The above quoted sec-

tion requires 'giving sixty days' notice to the delinquent' as a condition precedent to the revocation. You do not state definitely that the notice was given sixty days prior to the revocation. However, I am assuming this to be the case. The specific provision of this section with respect to renewal of licenses is:

'Within such (sixty day) period (the delinquent) shall have the right of renewal of such certificate on payment of the renewal fee with a penalty of five dollars * * *'

It is evident from the language contained in this section, that the legislative intent was to authorize the State Board of Optometry to take formal action as to the revocation of licenses and thereupon notify those delinquent of such action. The statute is not clear as to whether this action by the board should be in the form of a notification to the delinquent that his license will be revoked not less than sixty days after the receipt of such notice or whether a conditional revocation should be made by the board, to become irrevocable within a period not less than sixty days after notice to the delinquent.

I believe it would be good practice to adopt the method of placing a resolution upon the minutes of the board, which resolution should show the names of the delinquents, together with the numbers of their license certificates and such other data as is appropriate and set forth a revocation to become effective at a future date which must not be less than sixty days after notice of such action has been received by the offender. Then if the annual license fee, together with the penalty of five dollars, is paid within sixty days from receipt of the notice, such conditional revocation should be entered upon the records of the board as to the person so renewing his license."

You also inquire as to whether or not formal action of your board is necessary to suspend a license based upon the failure to pay this annual renewal fee. As to this, it is observed that Section 1323-1, supra, contains no provision to the effect that the license shall be ipso facto suspended under such circumstances and it accordingly follows that your board should take formal action in suspension at any time on or after March 1 of each year with respect to licensees who have failed to comply with the provisions of such Section 1323-1.

In answer to your second and third questions, it is my opinion that in the event of the failure of licensed dentists to comply with the provisions of Section 1323-1, General Code, with respect to annual renewal of their licenses and payment of fee therefor as therein provided, the State Dental Board, after having served such licensees with notices re-

quired by such section, should take formal action on or after March 1 of each year to suspend the licenses of such licensees without the hearing required by Section 1326, General Code.

With respect to the meaning of the phrase "last address," as used in Section 1323-1, *supra*, this question is answered by such section. This section requires licensees to annually register their name and address with the secretary of your board and further requires such licensees in the event of any change in their office address to notify your secretary in writing thereof within ten days after such change takes place. The "last address" to which you are required to send the notices provided by such Section 1323-1 is obviously the last address as appearing upon the records of your board at the time either the first or second notice is required to be sent.

Your remaining questions require no answer in view of my conclusions in answer to your third question.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2751.

KENT STATE UNIVERSITY—WHERE TERM MEMBER BOARD OF TRUSTEES EXPIRES WHEN SENATE IS IN SESSION—INCUMBENT LAWFULLY SERVES UNTIL SUCCESSOR IS APPOINTED, QUALIFIED AND CONFIRMED.

SYLLABUS:

Where the term of a member of the Board of Trustees of Kent State University expires during the time the Senate is in session, the incumbent trustee lawfully continues to serve as a member of such board of trustees until his successor is appointed and qualified and such appointment confirmed by the Senate.

COLUMBUS, OHIO, July 23, 1938.

MR. K. C. LEEBRICK, *President, Kent State University, Kent, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication of recent date which reads as follows:

"In accordance with the following action of the Board, I am respectfully requesting an opinion from your office upon the status of Mr. John R. Williams, a present member of the Board of Trustees, in relation to the newspaper statement we have that Mr. Robert McGhie of Youngstown, has been appointed a member of the Board.