

Board of Pharmacy under the provisions of Sections 1311 and 1312, General Code, and paid into the State treasury, which collection and deposit appears to have been made by mistake, cannot be refunded to the person entitled thereto until the Legislature has made a specific appropriation thereof, and that under such circumstances, application should be made by the person seeking such refund to the Sundry Claims Board for action by the Legislature in the event the Sundry Claims Board determines the applicant is entitled to reimbursement.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

749.

APPLICANT—COUNTY TEACHER'S CERTIFICATE—EXAMINATION
 DISCUSSED.

SYLLABUS:

Applicants for county teachers' certificates, who elect to be examined in all subjects at one examination, but who fail in one or more subjects, must be re-examined in all branches before they are entitled to a certificate.

COLUMBUS, OHIO, August 15, 1929.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion, as follows:

“Section 7818 of the General Code provides in substance that when an applicant presents himself before the county board of examiners, the examiners shall elect what subjects he shall take, if he desires to take in two different days. It provides that if he elects to take half the first day, he may take the remaining half not later than the second regular examination subsequent thereto, and he will be allowed to take over any subjects in which he does not get a passing grade out of the first half at the time he takes the second half.

The interpretation of the law is that if he elects to take all the examination the first day or in one day, and should pass in all the subjects except one or two, he would not be allowed to take the examination the second day on those two subjects, but would have to begin all over and receive no benefit from the nine or ten subjects which he had successfully passed.

It seems that with that interpretation, the one who takes all the examination in one day is placed in a somewhat unfair position, although he might have made a much better showing than some other person who elects to take but one-half, and having passed in only one subject, we might say he would be allowed to take all the remainder together with the second half at the next examination.

We desire to have an interpretation of this section with the above statement in mind.”

Section 7818, General Code, concerning which you inquire, relates to the examination of applicants for county teachers' certificates, and reads as follows:

"A majority of the board may examine applicants and grant certificates. An applicant for a county teachers' certificate may, if he so elects, take one-half of the subjects in which he is to be examined on one day and the remainder one-half not later than the second regular examination day thereafter. The subjects to be taken the first day by an applicant shall be determined by the board of county examiners.

If an applicant electing to take the examination in two days fails to obtain on the first day a grade of seventy-five per cent or more, in any subject or subjects, such applicant may elect to be re-examined in such subject or subjects on the second day on which such applicant is to be examined. As a condition of an applicant's being admitted to take the examination he shall pay to the board for the use of the county board of education fund a fee of fifty cents. Applicants taking the examination in two parts shall make on the date when each part is taken an application accompanied with a fee of fifty cents."

You state in your communication that this section has been interpreted and that said interpretation is that if an applicant for said certificate has elected to take all of the branches at one examination and fails to pass in any of the subjects, he may not be re-examined in those subjects at the subsequent examinations. It is apparent that this interpretation is correct. The language of the statute is quite plain and its operation is uniform. Any applicant who is seeking such certificate may be examined in all branches required by the board of examiners on one day, or, if he or she elects so to do, may take two separate examination days for that purpose. This right is optional with the applicant and available to all. If the applicant has elected to take the examination in two parts, such applicant must pay a fee of fifty cents for each examination. In case he or she fails in one or more branches in which the examination is had on the first day, such applicant may be re-examined in those subjects, as well as being examined on the remaining subjects, at the next examination day. If, however, the applicant elects to take all the branches in one day and fails in any one or more of said subjects, such applicant has a right to be re-examined in all branches at the next examination by making application and paying the proper fee. This does not place any applicant in any unfair position, because all applicants have a right to take the examination in two sittings if they so wish.

It is my opinion, therefore, that applicants for county teachers' certificates, who elect to be examined in all subjects at one examination, but who fail in one or more subjects, must be re-examined in all branches before they are entitled to a certificate.

Respectfully,

GILBERT BETTMAN,
Attorney General.

750.

CORPORATION—FEES CHARGEABLE FOR FILING CERTIFICATE SHOWING CHANGE OF STATUTORY AGENT WITH SECRETARY OF STATE—SECTION 8623-129, GENERAL CODE, APPLICABLE TO DOMESTIC CORPORATIONS ONLY.

SYLLABUS:

Section 8623-129, General Code, providing for the fee to be charged by the Secretary of State for filing an appointment of an agent to take the place of an agent pre-