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1. COSMETOLOGIST, MANAGING — RETIRED MORE THAN THREE YEARS — MAY BE RESTORED TO PRACTICE — ELECT TO BE MANAGER OR OPERATOR — PAY LAPSED RENEWAL FEES — LICENSE — SECTION 1082-13 G.C.
2. LICENSE LAPSED MORE THAN ONE YEAR — COSMETOLOGIST MAY NOT KEEP WITHIN THREE YEAR PERIOD BY PAYING ONE ANNUAL RENEWAL FEE.

## SYLLABUS:

1. A managing cosmetologist who has retired from practice for not more than three years may, at his election, be restored to the practice of cosmetology either as a manager or an operator upon payment of all lapsed renewal fees for such respective licenses as fixed by Section 1082-13, General Code.

2. A cosmetologist, who has permitted his license to lapse for a period of more than one year, may not keep himself within the three year period permitted for restoration of licenses by paying one annual renewal fee.

Columbus, Ohio, June 27, 1942.

Mrs. Lily C. West, Secretary, State Board of Cosmetology,  
Columbus, Ohio.

Dear Mrs. West:

You have requested my opinion upon the following questions:

“1. Referring to Section 1082-13 of the General Code, may the lapsed license fees for any license be renewed on the operator basis of three (3) dollars per year, or must persons registered as managers, renew lapsed licenses as managers and pay the five (5) dollar fee even when those persons have not worked during the lapsed time?”

2. Referring to Section 1082-13 of the General Code, may a person renew one lapsed license as partial payment to keep him within the three year period granted by law, or must it be a restoration of all lapsed licenses even though the applicant does not wish a current license to practice cosmetology?”

The statute pertinent to your inquiry is Section 1082-13, General Code, as follows:

“Every licensee as provided in this act, who continues in

the actual practice, shall, annually, on the first of July, have his or her license renewed by the board, upon the payment of the required renewal fee. Applications for renewal of licenses may be made to the board at any time during the month of June.

The annual renewal fee for each license shall be as follows:

For each managing cosmetologist, the annual fee shall be five dollars (\$5.00).

For each operator and each manicurist the annual fee shall be three (\$3.00) dollars.

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 for more than three years, may have his or her license restored, without examination.” (Emphasis mine.)

It is a fundamental principle of statutory construction that unless otherwise defined, the Legislature intended that words be given their natural and ordinary meaning.

A license is a permission granted by some competent authority to do some act which, without such permission, would be illegal. State, ex rel. Zugravu v. O'Brien, 130 O.S. 23, 196 N.E. 664.

Section 1082-1, General Code, contains definitions applicable to the chapter relating to the state Board of Cosmetology, and the last two paragraphs of that section are as follows:

“(h) The words ‘manager’ or ‘managing cosmetologist’ are defined as any person who has or has had direct supervision over operators in a beauty parlor.

(i) The word ‘operator’ is defined as any person practicing cosmetology who is not a manager, or apprentice or student.”

It is apparent from these definitions that one who holds a “manager’s” or “managing cosmetologist’s” license, is entitled to practice cosmetology. In other words, a “manager” or “managing cosmetologist” is licensed primarily as a practitioner and has at the same time the right under the same license to exercise “direct supervision over operators.” This right to exercise supervision is only one part of the privilege granted by such a license.

The syllabus of Opinion No. 683, Opinions of the Attorney General for 1939, Volume I, page 842, rendered to your office under date of June 1, 1939, reads as follows:

“When the license of a managing cosmetologist has lapsed because of retirement from practice, said party is entitled to have the managers’ license restored upon compliance with the requirements of Section 1082-13, General Code.”

It does not follow, however, that such licensee may not have restoration upon the “operator” basis only. Any person who is licensed as a manager may, at any renewal period, have issued to him a license to practice as an operator, or as a manager, because, as stated above, the right to practice as a manager is only one part of the privilege of the license and it is within his own discretion whether he will seek restoration of all or only a portion of the privileges he formerly held under the license.

However, if the license of a manager has lapsed for more than three years, such person, if he desired to be restored to a managing cosmetologist’s license, would be compelled to meet the requirements for a manager’s license as set out in Section 1082-5, General Code. The pertinent parts of that section are 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 6 months immediately prior to application; be of good moral character, 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 5 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.”

Therefore, my answer to your first question is that the licensee may elect at the time of restoration whether he will have his license restored upon the manager's or the operator's basis. If he desires restoration of his license to practice as a manager he must pay the renewal fee of Five Dollars (\$5.00) per year for each year lapsed. If he desires restoration upon the operator basis only, he is required to pay the renewal fee of Three Dollars (\$3.00) per year for each year lapsed.

If a person who has formerly been licensed as a manager does not secure restoration of his license either upon the manager's or operator's basis within the three year period provided by statute, he can be re-licensed after examination as an operator only, and then become a manager by compliance with the requirements of Section 1082-5, General Code, as set forth above. It will be noted that the statutes make no provision for examination for a manager's license as such. To be licensed as a managing cosmetologist it is necessary to meet the requirements of Section 1082-5, supra, one of the prerequisites of which is, in some circumstances, that the applicant had been previously licensed as an operator. And, of course, to be an operator, the applicant must, in some instances, have passed the examination.

Your question contains the language, “even when those persons have not worked during the lapsed time.” I want to point out only the fact that such a consideration is immaterial, because if a person practiced during the time his license was in a lapsed state, he was in fact practicing without a license and subject to the penalties provided in such cases.

With respect to your second question, your attention is again invited to Section 1082-13, General Code, which provides that one who desires to have his or her license *restored* must pay *all* lapsed renewal fees.

In this connection, it is pointed out that the Board of Cosmetology has only such powers as are expressly given it by statute, and such implied powers as are necessary to carry out the expressed powers. Under the terms of the above section, the Board is authorized to accept the annual renewal fees for cosmetologists', operators' and manicurists' licenses and to restore lapsed licenses of cosmetologists and manicurists upon payment of all lapsed renewal fees.

In order to restore such a lapsed license to power and effect, it would, therefore, be necessary that the applicant pay *all* lapsed renewal fees. The payment of only one annual renewal fee, in instances where the license had lapsed for a period of two or three years, would not effect a restoration of the license. Consequently, the acceptance of part of a lapsed fee is not authorized by the statute.

For example, a person whose license lapsed the first of July, 1939 could not by the payment of the fee for only one year beginning on that date keep himself within the three year period granted by the statute for renewal of licenses, because payment for the year 1939 could not vitalize or restore his right to practice then, as of now, and, therefore, as of July 1, 1942 his license would not have been restored within the three year period preceding.

Therefore, my answer to your second question must be that a cosmetologist, who has permitted his license to lapse for a period of more than one year, may not keep himself within the three year period permitted for restoration of licenses by paying one annual renewal fee.

Respectfully,

THOMAS J. HERBERT  
Attorney General.