

3343.

STATE DENTAL BOARD—UNAUTHORIZED TO IMPOSE GREATER GENERAL EDUCATIONAL REQUIREMENTS UPON DENTAL APPLICANTS THAN THOSE REQUIRED UNDER SECTION 1321-1, GENERAL CODE—CONSIDERATION OF PERTINENT ELEMENTS BEARING ON PROFESSIONAL COLLEGE ITSELF, AUTHORIZED—WHEN NUMBER OF YEARS OF COLLEGE ATTENDANCE INCREASED, CHANGE MAY NOT HAVE RETROSPECTIVE EFFECT.

*SYLLABUS:*

1. *In view of the provision of Section 1321-1, General Code; that applicants for license to practice dentistry in this state must be possessed of a general education equal to that required for graduation from a first grade high school in this state, the State Dental Board is without authority to impose any further general educational requirements upon such applicants by taking the position that a reputable dental college shall only be such college as requires two years of general college work in an arts course prior to admitting students to its dental college.*

2. *The Dental Board has jurisdiction, however, to consider any pertinent elements bearing upon the professional college itself, such as the number of years required to complete the course and the instruction given.*

3. *In the event the board desires to lengthen the number of years which an applicant for examination must attend a dental college before such applicant may be permitted to take the examination of the board, such change should not be effective so as to give it a retrospective effect.*

COLUMBUS, OHIO, June 19, 1931.

*Ohio State Dental Board, Medical Arts Bldg., Columbus, Ohio.*

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

“The Dental Colleges of the United States and Canada have, through the past few years, been intently changing their curriculum to a higher educational plane.

Conventions of the American Faculties Association, have been held to this end. Many Colleges have adopted the 2-4 plan, (2 years college (Arts) and 4 years of dentistry); other schools have adopted the 1-4 plan (1 year college (Arts) and 4 years dentistry); and others the 2-3 plan (2 years college (Arts) and 3 years dentistry).

The Educational Councils of America, composed of five members from the American Faculties Association, five members from the American Dental Association and five from the National Dental Examining Board, have rated all of the schools as “A” and “B.” The Ohio Board has always accepted this Council’s rating.

Ohio’s two Dental Colleges, The Ohio State University College of Dentistry and the Western Reserve College of Dentistry, both University controlled schools, have adopted the 2-4 plan, of education. The Ohio Examining Board heartily approves of this plan.

The General Code 1321 give the Board the absolute right to define a reputable College. Also see Sec. 1324.

In view of this, is it right and proper that the Ohio Board refuse to examine graduate from a 1-4 or 2-3 college? For example, say a stu-

dent from the State of Ohio matriculates at Michigan, he can be graduated one year sooner than an Ohio educated student.

In your opinion, should this student be compelled to complete as many scholastic years as the Ohio graduate? Does the Ohio Board have the right to exclude him from examination? Should the Deans of the Colleges in the United States and Canada be notified that from this date forward that it will be their duty to notify every matriculate that in all Colleges other than a 2-4 plan they would not be permitted to take the Ohio Board examinations, or can the Ohio Board rightly refuse to examine all graduates of this year?

Can the Ohio Board officially refuse to examine graduates of any years dating back ad lib. who has not completed a 2-4 plan schedule?"

Section 1321, General Code, authorizes your board to define what shall constitute a "reputable dental college." This section provides as follows:

"Each person who desires to practice dentistry within this state shall file with the secretary of the state dental board a written application for a license and furnish satisfactory proof that he is at least twenty-one years of age, of good moral character, and present evidence satisfactory to the board that he is a graduate of a reputable dental college, as defined by the board. Such application must be upon the form prescribed by the board and verified by oath."

The discretion which the legislature has vested in your board in the foregoing section was commented upon by this office in an opinion appearing in Opinions of the Attorney General for 1916, Vol. II, at p. 1556, as follows:

"This section vests in your board the discretion and right to define which shall be regarded and held by you to be a reputable college. The fact that a dental college is authorized by law to confer degrees does not necessarily constitute it a reputable college, nor impose upon you the unqualified duty of so defining it. Nor does the fact that a dental college, by reason of not possessing the necessary property qualifications or for any other reason, not affecting its efficiency, is not authorized to confer degrees, necessarily deprive it of the right to be regarded by your board as a reputable college."

While there is no question as to the latitude extended to your board in determining what dental colleges shall be considered reputable within the meaning of the section, providing, of course, your board does not abuse its discretion in the determination of such matters, the specific question which you present does not appear to me to be a question bearing upon the reputability of dental colleges but rather a question of the extent of the power which your board may have to determine the preliminary educational qualifications of students prior to their entrance in a dental college. Obviously, if one dental college requires a high school diploma before admitting a student and another dental college requires two years of college work in an arts course before admitting a pupil to its dental college, in the absence of any questions raised as to the courses of each school in dentistry, your question is simply one of preliminary general educational qualifications.

It is pertinent to note the provisions of Section 1321-1, General Code, which section provides in part as follows:

"The applicant shall also present with his application a certificate of the state superintendent of public instruction, that he is possessed of a general education equal to that required for graduation from a first grade high school in this state. \* \* \*."

The legislature has obviously seen fit to expressly define what shall be necessary with respect to general educational requirements. Having so expressed itself, I am unable to find any provision which may be construed as authorizing your board to change these general educational requirements.

Of course, if any question is raised as to the merits of the dental colleges, these are proper matters for the consideration of your board and any pertinent elements with respect to the professional training offered by the various dental colleges are, of course, proper matters for consideration. In the case of *State, ex rel. Medical College v. Coleman, et al.*, 64 O. S. 377, the Supreme Court said at p. 388:

"The statute does not define what shall constitute a medical institution 'in good standing.' Its language is that, 'if the board shall find the diploma to be genuine, and from a legally chartered medical institution in good standing as determined by the board,' etc., thus leaving the standing of the institution whose diploma is presented by an applicant, to be determined according to the best judgment of the board.

It is unnecessary to inquire here whether there may be cases in which the courts would undertake to correct or control the judgment of the board on this question. It is clear that the standing of a medical college within the meaning of the statute, is not to be determined alone from the course of study it has prescribed for graduation. The statute imports, at least, that the institution shall be one which has established a favorable reputation among members of the medical profession; and the board should not be required to recognize one, that, from the brief period of its existence, or the novelty of its system of treatment has not yet acquired such reputation, but might, in the judgment of the board, be considered as still in an experimental state. The statute has undoubtedly left much in this respect to the sound discretion of the members of the board, who, in passing upon the various applications presented to them, it must be assumed, will act as their official position requires, fairly, impartially, and justly to all concerned."

I find nothing in the foregoing case, however, which may be said to authorize your board to consider preliminary general educational qualifications as pertinent to a determination of the professional standing of a professional school. Undoubtedly if the legislature had failed to expressly provide the general educational requirements which must be met by applicants for examination, Section 1321, supra, would probably be subject to a broad enough construction so as to authorize your board to consider general educational requirements as a pertinent element in determining what shall constitute a "reputable dental college," but it is my view that the express language of Section 1321-1, supra, precludes such a liberal construction. While the requirement that a preliminary two years course of college work would undoubtedly raise the standard of the profession, the remedy under the present law lies with the legislature.

It is accordingly my opinion in specific answer to your inquiry that, in view of the provisions of Section 1321-1, General Code, that applicants for license to practice dentistry in this state must be possessed of a general education equal to

that required for graduation from a first grade high school in this state, the State Dental Board is without authority to impose any further general educational requirements upon such applicants by taking the position that a reputable dental college shall only be such college as requires two years of general college work in an arts course prior to admitting students to its dental college. The Dental Board has jurisdiction, however, to consider any pertinent elements bearing upon the professional college itself, such as the number of years required to complete the course and the instruction given.

You also raise the question as to when a present order of your board changing a rule heretofore in effect as to what length of course a dental college shall require before such college shall be regarded as a "reputable dental college" may be effective. If, for instance, you have been examining graduates from a given dental college having a three-year course in dentistry and you should now determine that only colleges having a four-year course shall be regarded as reputable dental colleges, it is my opinion that such an order should not be effective as to students graduating this year or as to students who have already matriculated and who complete their courses within the three-year term. To endeavor to make such an order immediately effective would result in your board exercising a power which, in its effect, would be retrospective and not prospective. Of course, a constitutional question may be raised as to the validity of such attempted action, but it is unnecessary to here consider the constitutional effect thereof, since in my opinion any such attempted action would at least constitute an abuse of the discretion vested in your board by the legislature.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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3344.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, June 19, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

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3345.

APPROVAL, BONDS OF VILLAGE OF LYNCHBURG, HIGHLAND COUNTY, OHIO—\$17,475.00.

COLUMBUS, OHIO, June 20, 1931.

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

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3346.

APPROVAL, CORRECTED ABSTRACT OF TITLE TO LAND OF ELMER C. DUNNICK, EDWARD DUNNICK, J. FRANK DUNNICK AND ELSIE D. TAWSE IN THE CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, June 22, 1931.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval a