

OPINION NO. 68-060**Syllabus:**

1. It is mandatory that an applicant for a barber's license under the reciprocity provision of Section 4709.19, Revised Code, prove by sworn affidavits that he has practiced as a barber in another state or country for at least two years immediately prior to making an application.

2. There is no requirement that an applicant filing pursuant to the requirements of Section 4709.19, Revised Code, state his intention to file under such section.

3. The State Board of Barber Examiners must specify the time for the next examination to an applicant who has failed his first examination pursuant to Section 4709.19, Revised Code, and such applicant need not file another application for the next examination.

4. The sworn affidavits required by Section 4709.19, Revised Code, should be furnished by the State Board of Barber Examiners, or some comparable body, in the state where the applicant claims to have been practicing.

5. There is no requirement that an applicant be a resident of any particular state in order to file an application pursuant to Section 4709.19, Revised Code.

**To: Charles M. Dunbar, Secretary, State Board of Barber Examiners,
Columbus, Ohio**

By: William B. Saxbe, Attorney General, April 1, 1968

I have before me your request for my opinion which reads as follows:

"1. Under Section 4709.19, Revised Code, an applicant must prove by sworn affidavits that he has practiced as a barber in another state or country for at least two years immediately prior to making an application.

"Is this a mandatory or discretionary requirement?

"2. Must applicant for barber examination, by virtue of Section 4709.19, Revised Code, state his intention to file for examination under such section?

"3. Regarding the provision of Section 4709.19, Revised Code, referring to the 'next examination', does this mean that the State Board of Barber Examiners has to specify the time for the next examination, or must the applicant request and file an application for such next examination?

"4. Under provisions of Section 4709.19, Revised Code, a barber who wishes to take examination under this section must 'prove by sworn affidavits that he has practiced as a registered barber in another state or country for at least two years immediately prior to making application in this state * * *'; based on this provision, I have two additional questions:

"(A) May these affidavits be required to be furnished by the State Board of Barber Examiners in the State in which the applicant claims to have been practicing, and show him to have been a licensed barber in that State?

"(B) Must the applicant, under Section 4709.19, Revised Code, be a resident of the State from which he is applying or can he be a resident of Ohio?"

Section 4709.19, Revised Code, formerly provided in part:

"(A) A person who is at least eighteen years of age and has a diploma showing graduation from an eighth grade grammar school, or an equivalent education as determined by an examination conducted under the supervision of a board of education, and either has a license or certificate of registration as a practicing barber from another state or country, which has substantially the same requirements for licensing or registering barbers as required by sections 4709.01 to 4709.23, inclusive, of the Revised Code, or who can prove by sworn affidavits that he has practiced as a barber in this state or in another state or country for at least two years immediately prior to making application in this state, shall upon payment of the required fee be issued a permit to practice as a journeyman barber until he is called by the board for examination to determine his fitness to receive a certificate of registration to practice barbering.

"If such applicant fails to pass the examination he shall be permitted to continue to practice as a journeyman barber until the next examination when he shall again be examined to determine his fitness to receive a certificate.

"Should any such applicant fail to pass three such examinations he shall not be eligible for further examination and shall not be qualified to continue to practice in this state.

"* * * * *"

The General Assembly amended this pertinent part of

Section 4709.19, Revised Code, as follows (effective December 20, 1967):

"(A) A person who is at least eighteen years of age and has an eighth grade education, or an equivalent education as determined by an examination conducted under the supervision of the department of education, and has a license or certificate of registration as a practicing barber from another state or country, which has substantially the same requirements for licensing or registering barbers as required by sections 4709.01 to 4709.23, inclusive, of the Revised Code, and can prove by sworn affidavits that he has practiced as a registered barber in another state or country for at least two years immediately prior to making application in this state, shall upon payment of the required fee be called by the board for examination to determine his fitness to receive a certificate of registration to practice barbering.

"If such applicant fails to pass the examination he shall be called for the next examination when he shall again be examined to determine his fitness to receive a certificate.

"Should any such applicant fail to pass three such examinations he shall not be eligible for further examination and shall not be qualified to practice in this state.
(Relevant changes in the 1967 amendment underlined)

"* * * * * * * *"

You first inquire as to whether the applicant's proof by sworn affidavit concerning practice in another state or country is mandatory or discretionary. I call your attention to the recent revision of Section 4709.19, supra. You will notice that the word "and" has been inserted prior to the provision concerning sworn affidavits and the word "or" deleted. Formerly the sworn affidavits were an alternative qualification under the statute in lieu of a license or certificate of registration. But it is now clear that both are mandatory requirements under the latest revision.

In response to your second question, there is nothing expressed in Section 4709.19, Revised Code, that requires an applicant to state his intention to file for examination specifically under this section.

Your third question is partially answered by reference to the change effected in the second paragraph of the recent revision of Section 4709.19 (A), supra. It provides that upon failing the first examination the applicant shall be "called for the next examination when he shall again be examined." Section 4709.11, Revised Code, provides:

"The board of barber examiners shall conduct examinations for applicants for certificates of registration to practice as registered barbers and as registered ap-

prentices at least four times each year at such times and places as the board shall determine.

"Examinations shall include both a practical demonstration and a written and oral test, and shall relate only to barbering."

Correlation of the two above cited provisions dictates the conclusion that the State Board of Barber Examiners must specify the time of the next examination pursuant to Section 4709.11, Revised Code, and call for the applicant pursuant to Section 4709.19 (A), Revised Code. There is no requirement that the applicant file a new application for his second examination.

Your fourth question also refers to the revised Section 4709.19, supra. The statute does not expressly require the sworn affidavits to be furnished by the State Board of Barber Examiners of the state where the applicant claims to have been practicing, but it is obvious that the best evidence in such a situation would be from official records in other states, 21 Ohio Jur., 2d 273, Sections 255 and 261, and the most logical source would be the other State's Board of Barber Examiners, or some comparable body. This analysis is consistent with the statute's apparent intent to frustrate the applicant from producing an erroneous affidavit as a result of the applicant's intention or honest mistake. Thus, it is my opinion that these affidavits should be furnished by one who would reasonably be apprised of the facts of the affidavit and the State Board of Barber Examiners, or a comparable body, in the state where the applicant claims to have been practicing, would be the body most likely to have such facts.

Your final question concerns the applicant's state of residence under Section 4709.19, Revised Code. There is no requirement as to residence in any of the provisions of Chapter 4709, Revised Code. An applicant's residence is seemingly irrelevant under Section 4709.19, supra, which is concerned with qualifications for barbering in Ohio. Thus an applicant could be a resident of a neighboring state and still qualify to practice in Ohio under Section 4709.19, Revised Code.

Therefore, it is my opinion and you are informed that:

1. It is mandatory that an applicant for a barber's license under the reciprocity provision of Section 4709.19, Revised Code, prove by sworn affidavits that he has practiced as a barber in another state or country for at least two years immediately prior to making an application.

2. There is no requirement that an applicant filing pursuant to the requirement of Section 4709.19, Revised Code, state his intention to file under such section.

3. The State Board of Barber Examiners must specify the time for the next examination to an applicant who has failed his first examination pursuant to Section 4709.19, Revised Code, and such applicant need not file another application for the next examination.

4. The sworn affidavits required by Section 4709.19, Revised Code, should be furnished by the State Board of Barber

Examiners, or some comparable body, in the state where the applicant claims to have been practicing.

5. There is no requirement that an applicant be a resident of any particular state in order to file an application pursuant to Section 4709.19, Revised Code.