

3513.

APPROVAL, GRANT OF EASEMENT, STATE OF OHIO, THROUGH CONSERVATION COMMISSIONER, DESIGNATED LAND, GREEN TOWNSHIP, SHELBY COUNTY, OHIO, WITH ERVIN D. BRAUTIGAM, FOR PUBLIC FISHING GROUNDS.

COLUMBUS, OHIO, January 5, 1939.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain grant of easement, No. 2079, executed to the State of Ohio by Ervin D. Brautigam, conveying to the State of Ohio, for the purposes therein stated, a certain tract of land in Green Township, Shelby County, Ohio.

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

Upon examination of the above instrument, I find that the same has 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 my approval endorsed thereon, which is herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3514.

COSMETOLOGY—LICENSEES WHO RETIRE FROM PRACTICE—LAPSED LICENSE—MORE THAN THREE YEARS—UNLESS ABLE TO MEET AGE AND EDUCATIONAL REQUIREMENTS—NOT ENTITLED TO EXAMINATION TO RESTORE LICENSE.

SYLLABUS:

Licensees who have retired from the practice of cosmetology for a period of more than three years are not, under the provisions of Section 1082-13 of the General Code, entitled to take an examination for the restoration of their respective licenses unless such applicants are able to

meet the age and educational requirements imposed by Section 1082-5 of the General Code.

COLUMBUS, OHIO, January 6, 1939.

State Board of Cosmetology, 810 Wyandotte Building, Columbus, Ohio.

MESDAMES: This is to acknowledge receipt of your recent communication wherein you request my opinion on the following:

“We would like an opinion on an operator, whose license has lapsed beyond the three year limit. The question is as follows: Shall the operator meet the educational requirements before being admitted to examination? By this, we mean both school education and beauty culture schooling.”

Section 1062-5 of the General Code provides in part 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.

(b) Applicants for an operator's license shall not be less than 16 years of age; have a total experience of at least seven hundred and fifty hours of instruction in the majority of the branches of cosmetology or a proportionate number of hours in any lesser group of subjects related to each other in a school of cosmetology; be of good moral character, and shall have an education equivalent to the eighth grade of public school, and shall pay the required fee.

(c) Applicants for a manicurist's license shall not be less than 16 years of age; be of good moral character; and shall have at least practical training of 150 hours in an approved school of cosmetology and shall pay the required fee. * * *”

As will be noted, the above quoted section sets forth in detail the requirements which must be met by an applicant before being eligible to an examination for a cosmetologist or manicurist license.

Section 1082-10 of the General Code, provides as follows:

“All persons who have been engaged in the actual practice of any branch or branches of cosmetology in established places of business or who have taught cosmetology in a bonafide school of cosmetology in this state at the time of the taking effect of this act shall, upon application to the board as provided in this act and upon payment of each applicant of a fee of five (\$5.00) dollars be granted, without examination, and without complying with the age or educational requirements, a license to practice or teach one or more of the branches of cosmetology as operator, or manicurist, or to act as owner, instructor or manager of a beauty parlor or school of cosmetology as the case may be.

All persons who, prior to, or at the time of the passage of this act, were studying any one or more of the occupations of a cosmetologist in a school of cosmetology, shall upon their examination, be granted credit for such study and not be subject to the requirements as to preliminary education or age.”

Under the provisions of Section 1082-10, supra, those persons who were actually engaged in the practice of any branch or branches of cosmetology in established places of business or who had taught cosmetology in a bonafide school of cosmetology at the time of the taking effect of the Cosmetology Act where upon application and upon the payment of a fee of Five Dollars (\$5.00) entitled, without examination and without complying with the age and educational requirements set forth in Section 1082-5, supra, to a license to practice or teach one or more of the branches of cosmetology as operator, or manicurist, or to act as an owner, instructor or manager of a beauty parlor or school, as the case may be.

Section 1082-13 of the General Code, provides in part as follows:

“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.” (Italics the writer’s.)

The Legislature, in the enactment of the above quoted section, has by the provisions thereof imposed upon those persons who have per-

mitted their licenses to lapse for a period of more than three years, the obligation of taking an examination before having their respective licenses restored. By virtue of this provision, the question becomes supreme as to whether or not this requirement also exacts from applicants the further obligation of meeting the age and educational requirements set forth in Section 1082-5, *supra*.

It becomes perfectly clear, from a consideration of the foregoing section, that if the provisions of Section 1082-13, *supra*, are to be construed as exacting from licensees who have permitted their licenses to lapse for a period of more than three years, the duty of meeting the age and educational requirements imposed by Section 1082-5 before being eligible to an examination for the restoration of their respective licenses, only those licensees who have been licensed by exemption under the provisions of Section 1082-10, *supra*, would be affected thereby. Such a construction is sound and appears to be beyond the question of a doubt. This for the very patent reason that the Legislature, in the enactment of Section 1082-5, *supra*, has seen fit to impose as conditions precedent certain age and educational requirements which must be obtained before applicants for cosmetology or manicurist licenses are entitled to an examination. Consequently, since the provisions of Section 1082-10, *supra*, impose upon licensees whose licenses have lapsed for a period of more than three years the obligation of taking an examination before having their respective licenses restored, it is quite apparent that such an examination may not be taken unless applicants therefor are possessed of the age and educational requirements set forth in Section 1082-5, *supra*.

It is, therefore, my opinion in specific answer to your question that licensees who have retired from the practice of cosmetology for a period of more than three years are not, under the provisions of Section 1082-13 of the General Code, entitled to take an examination for the restoration of their respective licenses unless such applicants are able to meet the age and educational requirements imposed by Section 1082-5 of the General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.