

I, John G. Price, Attorney-General of the state of Ohio, do hereby certify that the foregoing synopsis is a truthful statement of the contents and purpose of the proposed amendments therein referred to.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1199.

STATE BOARD OF OPTOMETRY—DUTY OF CLERK OF COURT TO REGISTER OPTOMETRIST'S CERTIFICATE—NO FEE PROVIDED—SEE SECTION 1295-29 G. C.

1. *Under the provisions of section 1295-29 G. C. (108 O. L. 73) the clerk of courts in order to comply with the requirements of said statute relative to the registering of an optometrist's certificate, should "record" the same.*

2. *The fees chargeable by the clerk of courts are fixed by statute, and the legislature in the language used in section 1295-29 relating to the fee, for such registry, failed to provide any fee for such purpose. However, the failure of the fee does not excuse the said clerk of courts from making said registry.*

COLUMBUS, OHIO, May 3, 1920.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your recent communication is as follows:

"Section 1295-29 of House Bill No. 240, 108 O. L., 73, concerning the practice of optometry, provides in part as follows:

"Each person to whom a certificate has been issued by said board shall, before practicing under the same, register said certificate in the office of the clerk of court of the common pleas in each county wherein he proposes to practice optometry, and shall pay therefor such fee as may be lawfully chargeable for such registry. The clerk of the court of common pleas in each county shall keep a certificate registration book wherein he shall promptly register each certificate for which the fee is paid."

Query: Is the clerk of courts, when a certificate is presented for registration, required to record it in its entirety or only make a brief notation showing the date of the certificate, the name of the person to whom issued, the place where the licensed person is to practice and the date of registration? What particular fee can the clerk of courts receive for this service?"

Your first inquiry requires the interpretation of the word "register" as used in the statute, a part of which you quote. It may be said that the words "record" and "register" are frequently used synonymously. See Century Dictionary. Bouvier's Law Dictionary has defined the word "register" when used as a noun as follows:

"A book containing a record of facts as they occur, kept by public authority;"

The word "recorded" has been defined:

"The word 'recorded' in ordinary usage signifies copied or transcribed into some permanent book."

Cady vs. Purser, 131 Cal. 552, 34 Cyc., 576,

and the word "record" has been held to be a synonym of "register."

Manchester Bldg. etc. Assn. vs. Beardsley, 66 Atl. 1.

It will be observed that in many states the officer who performs similar duties to the county recorder in Ohio is designated by statute as "register of deeds."

While it will be conceded that the term "register" is not always used in the same sense as the word "record," it is believed that when it is used in connection with the recording of an instrument that it has a very similar, if not the same, meaning. Inasmuch as the recording of an instrument is intended to preserve as evidence the original instrument and to inform the public of the character of the same, it follows that the most satisfactory way to comply with the requirements would be to make a complete copy of the same. In fact, as understood in law, the recording of an instrument contemplates making a complete copy of the same. It is apparent that if only material facts set forth in an instrument were included in the record, the officer in making such record would have to determine what the material facts were. His judgment in this regard might be at times erroneous and in such cases the very object of the requirement would in a measure be defeated. While it is not the purpose of this opinion to conclusively hold that there may not be such a partial record made as might be sustained as a substantial compliance with the requirements of the statute relative to the registering of said certificates, it is intended to suggest that under the circumstances a complete copy should be made, which procedure will remove all doubt in reference to the legality of such registry.

It will be observed that certificates authorizing the practice of medicine are required to be recorded with the probate court. A similar requirement is made of those authorized to practice as registered nurses. While the statutes in the two latter cases specifically require the recording of the certificates, it is believed that the intent and purpose of the registry of the certificate of an optometrist is the same as that in reference to the recording of a doctor's certificate.

In considering your second inquiry, a search of the statutes was made in an effort to find legal authority fixing the fee to be charged by the clerk of courts in such a case. While there are a number of statutes fixing the fees of clerks of courts, I have been unable to find any provision governing the case which you mention. The fees of the clerk of courts, as are the fees chargeable by all other officers, are specifically provided for by statute, and while there are fees provided for similar services, such as recording a notary public's commission, it is not believed that such provisions are applicable to the situation at hand.

In the case of Commissioners of Butler County vs. Welliver, 12 O. C. C., 440, it was held:

"Except by statute specifically provided, the clerk of court is not entitled to receive any compensation from the county treasury for any services rendered for the benefit of the county or the public however valuable and necessary such services may be, and although the law absolutely requires him to perform the same. If so required for the public, and no provision is made for its payment from the treasury, it must be regarded as gratuitous."

In the case of *Clark vs. Commissioners*, 58 O. S., 107, it was held:

"To warrant the payment of fees or compensation to an officer, out of the county treasury, it must appear that such payment is authorized by statute."

While in the cases above cited the question involved the fees of the clerk of courts, which fees the clerk at that time received as a part of his compensation and the statute has been changed giving the clerk of courts a salary in lieu of all fees, it is believed that the principle is the same in so far as collecting the fees for services rendered to the public is concerned.

In the case of *Haserodt vs. State ex rel.* 6 O. App. Rep.; 354, the issue was raised as to what fees a chief of police was entitled to receive under a statute which provided that his fees should be the same as provided for constables and sheriffs in certain cases. It appeared that under such circumstances the constable would receive one fee while the sheriff would receive another. In view of the two different provisions relative to the fees of the constable and sheriff, the court in this case decided that the legislature had failed to make any provision for fees for the chief of police in such cases because of the indefiniteness of the language used. It is believed that this case by analogy applies to the situation which you present.

In view of the foregoing, the conclusion is compelled that the legislature failed to make a sufficient provision to justify the clerk of courts to charge any fee for the registering of an optometrist's certificate. However, the fact that the legislature failed to provide a fee for the registering of said certificates will not excuse the clerk of courts from making said registry.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1200.

STATE TEACHERS' RETIREMENT SYSTEM—ALL TEACHERS TO WHOM ACT APPLIES MUST BE CERTIFIED BY EMPLOYER TO STATE RETIREMENT BOARD—WHEN ACT APPLIES TO TEACHERS OVER SEVENTY YEARS OF AGE—WHEN BOARD HAS AUTHORITY TO RETIRE TEACHERS—EFFECTIVE DATE OF RETIREMENT—WHEN TEACHERS OVER SIXTY YEARS OF AGE MAY RETIRE—EFFECTIVE DATE OF RETIREMENT.

1. Under the provisions of section 7896-50 G. C. the names of all teachers to whom the teachers' requirement act applies, must be certified by the employer to the state retirement board, and teachers over seventy years of age prior to September 1, 1920, must be re-employed or re-appointed during the school year 1920-1921, in order to become members of the retirement system.

2. The state retirement board is without authority to retire any teacher soon after the beginning of the school year, 1920-21, or at any time during such school year, for the law provides in various sections that the retirement of teachers eligible to retirement shall be effective as of the end of the school year then current.

3. Retirement of teachers over seventy years of age takes place on August 31 of the school year in which they become members, and the state retirement board shall automatically retire all other teachers who are members at the end of the