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1. COSMETOLOGY, STATE BOARD OF—NOT VESTED WITH AUTHORITY TO DETERMINE ACCRUAL OF FEES.
2. APPLICANT WHO FAILS TO PASS REQUIRED EXAMINATION NOT ENTITLED TO REFUND OF FEE PAID.
3. WHERE APPLICATION APPROVED FOR APPLICANT TO TAKE EXAMINATION AND TIME SCHEDULED, NO REFUND OF FEE WHERE APPLICANT FAILS TO APPEAR—O.A.G. 1946, 1142, PAGE 594.
4. WHERE INFORMATION FURNISHED, EVALUATED AND APPLICATION NOT APPROVED, APPLICANT NOT ENTITLED TO REFUND OF FEE.
5. RECIPROCITY—STATE—WHERE APPLICATION DISAPPROVED, APPLICANT NOT ENTITLED TO REFUND OF FEE—SECTION 1082-11 G. C.

SYLLABUS:

1. The State Board of Cosmetology is not vested with authority to determine the question of accrual of fees.

2. An applicant is not entitled to a refund of his fee where the application has been approved to take examination and the applicant takes the required examination but fails to pass.

3. Where the application has been approved to take an examination and the applicant is scheduled for examination but fails to appear, he is not entitled to a refund of the fee. 1946 Opinions of the Attorney General No. 1142, approved and followed.

4. Where the application is not approved after an evaluation of the information furnished, the applicant is not entitled to a refund of the fee.

5. Where the application is made for a license on the basis of reciprocity and is disapproved after investigation the applicant is not entitled to a refund of the fee.

Columbus, Ohio, May 26, 1949

State Board of Cosmetology
Columbus, Ohio

Gentlemen:

Your recent request for my opinion reads as follows:

“This is to request your opinion regarding the responsibility of this board to either encumber or refund fees paid under Sec-

tion 1082-12 of the General Code, in cases where the license applied for has not been issued. Specifically, we would appreciate your opinion where the following circumstances govern:

A. Assuming that the law is silent regarding any basis for determining whether the State has earned the fee, is it reasonable to presume that the board has the right to arrive at such determination?

B. Should the fee be refunded in cases where the application has been approved to take examination and the applicant takes the required examination but fails to pass?

C. Should the fee be refunded in cases where the application has been approved to take examination and the applicant is scheduled for examination but fails to appear?

D. Should the fee be refunded in cases where the application is not approved after an evaluation of the information furnished, it is determined that the applicant has not met all of the requirements, and upon being so advised, makes no further effort to meet such requirements.

E. Should the fee be refunded in cases where the application is made under the provisions of Section 1082-11 for a license on the basis of reciprocity and is disapproved after the board investigates the training records, license records, etc., along with other facts relative to reciprocity with a given state?

We have reviewed the Opinions of the Attorney General No. 1873 given in 1940 and No. 1142 given in 1946, but we feel that we need your further opinion as it relates to the specific questions asked herein."

Section 1082-12 General Code, reads as follows:

"The fee for a license as a managing cosmetologist shall be five dollars (\$5.00).

"Each applicant for a license, and/or for examination for determining his or her fitness to practice cosmetology as an operator, shall pay to the board a fee of five dollars, and for each re-examination (other than the second examination, for which no fee shall be required), a fee of three (\$3.00) dollars.

"The fee for examination and/or license as the case may be, as a manicurist shall be five (\$5.00) dollars and for each re-examination (other than a second examination for which no fee shall be required), a fee of three (\$3.00) dollars.

"Each applicant referred to in this section shall, in addition to the fees herein specified, furnish his or her own models."

Section 1082-6 General Code, reads as follows :

“Every application for admission to examination, and every application for a license as a cosmetologist, or any branch of cosmetology, shall be in writing, on blanks prepared and furnished by the board. Such application shall be accompanied by the fee herein specified, and shall contain proof of the qualifications of the applicant for examination, or for license, as provided herein, and shall be verified by the oath of the applicant.”

In an opinion of my immediate predecessor, it was said in Opinion No. 1142, of Opinions of the Attorney General for 1946, at page 595 :

“From these sections it is clear that payment of the required fee is a necessary prerequisite to a valid application for admission to examination. In other words, unless an applicant for admission to examination has complied with the procedure outlined in Section 1082-6, General Code, supra, which provides inter alia that the application be accompanied by the fee, the state board of cosmetology can not proceed to consider the applicant and certainly can not schedule him for examination. A glance will suffice to suggest that the absence from these sections of any provision for a refund of the fee or of any language which would indicate that the fee is contingent upon the taking of an examination or anything else.”

In specific answer to your first question it is my opinion that the State Board of Cosmetology is a creature of statute and as such, its powers and duties stem from a grant of power from the Legislature, rather than a limitation upon existing powers by the Legislature. Therefore, when the law is silent regarding any basis for determining whether the state has earned the fee, and the statute under which the fee is collected, uses mandatory language in directing the agency to make the charge the agency is precluded from determining the status of the fee as to accrual or non-accrual.

In answer to your second question it is my opinion that where the applicant has been approved to take the examination and the applicant takes the required examination but fails to pass, he is not entitled to a refund. The statute, in this instance, permits a second examination for which no fee shall be required, but any language indicating eligibility of an unsuccessful examinee for a refund of the fee is lacking. Section 1082-12 General Code, reads in part :

“* * * shall pay to the board a fee of five dollars, and for each re-examination (other than a second examination, for which no fee shall be required) * * *”

In answer to your third question, I concur in the language of Opinion No. 1142 from which I have quoted above, and in which the following appears:

“I feel that it could not be successfully urged that any person who had set in motion the wheels of the administrative machinery, whose application had been acted upon and approved and who had been scheduled for examination, receives no benefit from the payment of the fee. To argue that a person who had been scheduled for examination but had failed to appear is being treated unfairly when his request for a return of his fee is denied, would be even more unreasonable. The statute contemplates a contribution by the applicant to pay, partially at least, the expense of services rendered in his behalf and at his request.”

Therefore, it is my opinion that where the application has been approved, and the applicant is scheduled for examination but fails to appear he is not entitled to a refund.

In answer to your fourth question, I am of the opinion that where an application has been submitted and is not approved after an evaluation of the information furnished, that the applicant is not entitled to a refund. In this case, the applicant has set in operation the administrative procedure of the State Board of Cosmetology after acquainting himself with the sections of the General Code under which he is making application. The cost of processing these unapproved applications is in no way diminished by their subsequent rejection. The fees accompanying these applications are nominal and do not represent a full payment of the cost necessary to process the application. The legislature not having provided for a refund, the applicant is not entitled thereto.

In answer to your fifth question, I am of the opinion that an applicant for a license on the basis of reciprocity is not entitled to a refund where the board after investigation disapproves the same. The reasoning applied to the foregoing question is equally applicable in this case.

Respectfully,

HERBERT S. DUFFY,
Attorney General.