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FEE PAID BY APPLICANT TO TAKE EXAMINATION CONDUCTED BY STATE BOARD OF COSMETOLOGY—WHERE APPLICANT FAILS TO APPEAR FOR EXAMINATION, NO AUTHORITY IN LAW TO REFUND FEE PAID.

SYLLABUS:

When an applicant for admission to an examination conducted by the state board of cosmetology, after being approved and scheduled for examination, does not wish to take the examination or fails to appear for examination, the state board of cosmetology is without authority in law to refund the fee paid by the applicant.

Columbus, Ohio, August 12, 1946

Mrs. Edna D. Stout, Chairman, State Board of Cosmetology
Columbus, Ohio

Dear Madam:

Your request for my opinion reads:

“The members of the board have directed me to ask for the following information:

Kindly refer to Section 1082-12 of the General Code of Ohio, and advise— If an applicant from Ohio or another state does not wish to take the state board examination after being approved and scheduled for the examination, or fails to appear for scheduled examination, is it permissible for the department to refund the five dollar fee, which has been placed in the depository trust fund, since the applicant has neither taken the state board examination nor received a license to practice cosmetology?”

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 a 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."

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 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.

I note from your letter that the fees about which you are concerned have been placed in the state depository trust fund. In this regard I invite your attention to the section which created the state depository trust fund, Section 24-3, General Code, which reads as follows:

"For the purpose of providing a method of properly collecting, depositing and auditing of *contingent* receipts, received by various state departments, there is hereby created the state depository trust fund of which the treasurer of state shall be the custodian."
(Emphasis added.)

Section 24-4, General Code, relative to state depository trust fund deposits, reads in part as follows:

"Every state officer, state institution, department, board, commission, college or university, receiving fees or advances of money, or who, under the provisions of section 24 of the General Code, collect or receive fees, advances, or money, shall de-

posit all such receipts to the credit of the state depository trust fund, herein created, *when such receipts may be subject to refund or return to the sender; or when such receipts have not yet accrued to the state.* * * *”
(Emphasis added.)

It is clear from these sections that the state depository trust fund was created and is maintained to provide a place of deposit for contingent receipts, receipts subject to refund or return which have not accrued to the state at the time of deposit. There is no authority in the law whereunder you have a right to place in the depository trust fund the fees collected from applicants for admission to examination. As I have already pointed out these fees are not subject to refund or return; nor are they contingent fees. They have accrued to the state. That this was recognized by the General Assembly is evidenced by the terms of Section 1082-22, General Code, which reads as follows:

“All fees collected on behalf of the board of cosmetology, and all receipts of money shall be reported at the beginning of each week, for the week preceding, to the state auditor, and at the same time the entire amount of such collection shall be paid into the state treasury, and shall be credited to a fund to be known as the board of cosmetology’s rotary fund, which fund is hereby created. Such rotary fund shall be for the board of cosmetology, only, and out of it shall be paid upon the warrant of the state auditor, salaries and all other expenses necessarily incurred in carrying into effect the provisions of this act. Provided, however, that any money in excess of such operating expenses shall be credited to the general revenue fund of the state.”

This section was considered by my immediate predecessor in an opinion rendered to you pursuant to your request which involved a question similar to but not identical with the question you have presented to me. 1940 Opinions of the Attorney General, page 188, No. 1873. The first branch of the syllabus of that opinion reads as follows:

“1. All fees collected by the Board of Cosmetology are, under the provisions of Section 1082-22, General Code, required to be paid into the state treasury and after such payment may not be refunded without a specific appropriation by the General Assembly.”

I concur with this conclusion of my predecessor not alone for its legal accuracy but also because I feel that it could not be successfully urged that any person who had set in motion the wheels of the administrative ma-

chinery, 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. To permit a return of the fee under the circumstances you have outlined would be to subject to the whims and caprice of an applicant the manifest intention of the General Assembly.

In view of all this, it is my opinion, in specific answer to your inquiry, that when an applicant for admission to an examination conducted by the state board of cosmetology, after being approved and scheduled for examination, does not wish to take the examination or fails to appear for examination the state board of cosmetology is without authority in law to refund the fee paid by the applicant.

Respectfully,

HUGH S. JENKINS,
Attorney General.