

BOARD OF CHIROPRACTIC EXAMINERS: May not remit renewal fees; issuance of renewal license is mandatory on payment of required fee.

August 28, 1941

State Board of Chiropractic Examiners
Frances Building
Brookfield, Missouri



Attention: Dr. T. C. Oyler, Secretary

Gentlemen:

We are in receipt of your request for an opinion, dated June 1, 1941, as follows:

"There have been quite a number of the Chiropractors who are being taken in the draft. I have had a letter from several of them, asking if the board could or would dispense with the renewal of their license in 1942, feeling that when they are in the service of their country that they should not have to pay a license renewal fee. So far as the board is concerned, we are willing to do so, but can see no way under the law where we can legally waive the payment of the renewal.

"Secondly: the Missouri State Chiropractors held their annual convention in St. Louis recently and they adopted a resolution requesting that the board pass a regulation requiring that all Chiropractors practicing in the state must attend a two-day educational review course each year in order that their license may be renewed each biennium. Their idea was that we require them to attend the state convention, which is educational. I seriously doubt if the board has power to pass such a regulation, while I feel that it would be a

good thing for our profession and should be done. Yet, I doubt whether it would be advisable to specify where they get this review course, should they get one, as some Chiropractors wish to take a review course in a Chiropractic College, and would not feel that they would want to take two review courses. Specifying where it should be taken, I feel, might be arbitrary.

"I feel that the board is willing to pass such a regulation if it is in accordance with law, and could be enforced."

In answer to your first question, we find no statutes specifically exempting members of the armed forces of the United States from the payment of license fees. Section 10937, Revised Statutes of Missouri, 1939, is in part as follows:

"The following subjects are exempt from taxation: First, all persons belonging to the army of the United States; * * * "

Our Supreme Court has on several occasions ruled that this section, and the exemption set out therein, must be strictly construed (State v. Casey, 210 Mo. 235; State ex rel. v. Johnston, 214 Mo. 656), and the exemption has been held to apply only to property taxes. (State ex rel. v. Smith, 338 Mo. 409, 90 S. W. 2d 405)

Furthermore, the fees required to be paid under the provisions of Chapter 63, Revised Statutes of Missouri, 1939, which applies to chiropractors, are clearly license fees and not a tax in any sense. Section 10057 of the Revised Statutes of 1939, which refers to the renewal of licenses, reads as follows:

"Every person holding a license from the state board of chiropractic examiners, shall have it recorded with the circuit clerk of the county or city in which he or she maintains an office, and the date of recording shall in all cases be indorsed thereon. Until such license is filed for record, the holder shall exercise none of the rights or privileges conferred therein. The circuit clerk shall keep in a book provided for that purpose a complete list of all licenses recorded by him, with the date of recording thereof. A fee of \$1.00 shall be paid the official recording such license, which license shall at all times be displayed in the office of the holder thereof. All persons practicing chiropractic in this state shall pay on or before September 1st of each even-numbered year after a license is issued to them as herein provided, to said state board of chiropractic examiners, a renewal license fee of \$10.00, and no person shall practice chiropractic after September 1st of the even-numbered years following the issuance of such license, without such renewal. The secretary of the board shall on or before August 1st, of each even-numbered year, mail to all chiropractors in the state a notice that the renewal fee shall be due on or before the 1st day of September following such notice. Nothing in this chapter shall be construed so as to require that the renewal receipt shall be recorded as the original licenses are required to be recorded. Each practitioner of chiropractic shall display in his office in a conspicuous place his renewal license together with his license showing that he is lawfully entitled to practice chiropractic."

We think that portion of the above statute which is as follows - "All persons practicing chiropractic in this

state shall pay on or before September 1st of each even-numbered year after a license is issued to them as herein provided, to said state board of chiropractic examiners, a renewal license fee of \$10.00, and no person shall practice chiropractic after September 1st of the even-numbered years following the issuance of such license, without such renewal" - is decisive of the question at hand and clearly requires that a renewal fee of \$10.00 be paid every two years after the issuance of the original license by every person who desires to practice that science. We think the rule of construction found in *Keller v. State Social Security Commission*, 137 S. W. (2d) 898, is applicable, wherein the opinion states:

"In construing this statute the following well established rule should be kept in mind: Where the language of a statute is plain and unambiguous nothing contrary to the evident intent can be implied. State ex rel. *Jacobsmeier v. Thatcher*, 338 Mo. 622, 92 S. W. 2d 640. A statute should be so construed as to give effect to the legislative intent. State ex rel. *Wabash R. Co. v. Shain*, 341 Mo. 19, 106 S. W. 2d 898. A statute that is clear in its terms and leaves no room for construction must be enforced as written. *Dahlin v. Missouri Commission for Blind*, Mo. App., 262 S. W. 420. * * * * *

Since the statute by its terms clearly contemplates that it apply to all persons alike, we conclude that the Board has no power to waive the requirements of the statute so as to discriminate in favor of those in the armed forces of the United States, however desirable this may be. We think that any person applying for a renewal license, who had not paid a renewal fee for a period of years, even though he had not practiced chiropractic within those years, could be forced to pay the renewals for those years before securing his renewal license. We do not believe that this rule will work any particular hardship in the case of those who have been drafted to the Army since their period of service will undoubtedly expire before any two-year renewal period shall have elapsed.

In answer to your second question as to the validity of a proposed regulation that a two-day educational review course be required for renewal of a license, we fail to find any provision in the Chiropractic Act which authorizes the Board to make such regulation. The statute, by its terms, requires the issuance of a renewal license on payment of a fee of \$10.00. In fact, it terms the license a receipt at one point. We find the following in the section:

"Nothing in this section shall be construed so as to require that the renewal receipt shall be recorded as the original licenses are required to be recorded."

While we fail to find any case in this state discussing this exact problem, we find that our Supreme Court has discussed a similar section in the Dental Board Act in State ex rel. Wolfe v. Missouri Dental Board, 233 S. W. 390. In speaking of the effect of a statute similar to Section 10057, supra, the opinion states, l. c. 393, 394:

"One of the chief objects of the law is to get the cash with which to run the Missouri Dental Board."

"Then, for fear the Missouri Dental Board would run out of funds, the law requires the applicant, after he has been examined and given a certificate of registration, which certificate vouches for his educational and moral qualifications to practice dentistry, and before he can practice under his certificate of qualification (or 'registry,' as the law calls it), to get a license from the Missouri Dental Board and pay \$1 therefor. Section 5489, Laws of 1917, p. 256. This license must be renewed on or before November 30th of each year, and

casually the applicant must drop into the till of the Missouri Dental Board, \$1 each time. Section 5491, Laws of 1917, p. 257. No examination is required for this license. It is a fee proposition, pure and simple. It serves no substantial purpose other than the contribution annually of the dollar to the secretary of the Missouri Dental Board. True, it must be posted in the office, but the posting of the certificate of registration would serve the same end, because it bespeaks the qualification of the party.

* * * * *

"We now come to the law as to renewals of this original license. It is found in Acts of 1917, Laws of 1917, p. 257, Sec. 5491, which reads:

"All persons who have been regularly registered and licensed as dentists under the provisions of this act shall be entitled to have their license renewed upon application to said dental board on or before the 30th day of November in each calendar year next succeeding the expiration of the license then held by such applicant. All applications for renewal of license, as herein provided, shall be accompanied with a fee of \$1.00, and each new license so issued shall be kept and displayed, as herein provided for original licenses."

"Is there discretion lodged in the board in the performance of this act? We say not. The law says applicants for a renewal license 'shall be entitled to have their license renewed' upon payment of a fee of one dollar. Of course, the applicant must be regularly registered and previously licensed before he is entitled to a renewal license. If the applicant is duly registered and has been previously licensed, then

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the law says such 'applicant shall be entitled to a license.' There is no discretion found in this language. If the prerequisites exist, the renewal license must follow the application as the night follows the day."

It should be noted in the case just quoted that there must be an application for renewal of a dentist's license, which would present a greater opportunity for the exercise of discretion than in the case at hand where no application must be made, the only requirement being the receipt of the sum of \$10.00

CONCLUSION

It is the conclusion of this department that the State Board of Chiropractic Examiners has no power to exempt by rule or regulation any person from the payment of the renewal license fee required biennially of all persons practicing chiropractic.

It is the further opinion of this department that the State Board of Chiropractic Examiners has no authority to make a rule or regulation requiring any licensee to attend an educational review course as a prerequisite to the renewal of his license in September of the even-numbered years.

Respectfully submitted,

Approved:

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(Acting) Attorney General

RLH:VC