

## OFFICIAL OPINION NO. 29

May 21, 1947.

State Board of Medical Registration  
and Examination,  
416 K. of P. Building,  
Indianapolis 4, Indiana.

ATT: Miss Ruth V. Kirk,  
Executive Secretary.

Gentlemen:

Your letter of April 17, 1947 received, in which you desire to know if the Board of Medical Registration and Examination of Indiana is under Chapter 124 of the Acts of 1943, required to register only such applicants applying for registration under Chapter 254 of the Acts of 1947, as furnish such board with evidence of payment of poll and personal property tax.

Section 1 of Chapter 254 of the Acts of 1947 reads as follows:

“That every person who now holds, or may hereafter hold, a valid and unrevoked certificate for a license to practice the Healing Art in any form or manner, granted by either the State Board of Medical Registration and Examination or by the Board of Medical Registration and Examination of Indiana, shall be required to register with the Board of Medical Registration and Examination of Indiana, in the form and manner determined by said Board, during the month of July and not later than the last day of August, immediately following the effective date of this Act, which registration shall be for the period ending June 30, 1948. Each person as above indicated shall, annually thereafter, on or before August 31st of each year, be required to register with said Board. Each applicant for registration shall submit with his application the sum of five (\$5.00) dollars as the annual registration fee if he resides within the boundaries of the State of Indiana. All applicants residing outside the boundaries of the State of Indiana shall submit the sum of Ten (\$10.00) Dollars as the annual

registration fee; Provided, that no registration or fee for registration shall be required of any holder of a certificate on or before the month of July of the year following the year within which such certificate was issued. Failure of any such certificate holder to register and comply with the provisions of this Act shall operate automatically to cancel his certificate, and any license issued thereunder and the continued practice after the cancellation of the certificate and license issued thereunder shall be considered as practicing without license. A certificate canceled for failure to register may be reinstated by said Board upon submission of the applicant's last registration certificate together with the current and delinquent fees and a penalty fee in the sum of Ten (\$10.00) Dollars."

Section 42-102 Burns' 1945 Supp. same being Section 1, Chapter 124, Acts 1931, as finally amended by Section 1, Chapter 124, Acts 1943, provides in part as follows:

"It shall be unlawful for any board, officer, or person to issue any license, as hereinafter defined, to any person who is a resident of this state, unless the applicant for such license shall, at the time when he applies for such license, and in addition to all other requirements prescribed by law, submit a receipt or other evidence showing that such applicant has paid his poll and personal property taxes in full which accrued and fell due and payable during the year previous to the year in which such license is issued or to be issued. \* \* \*"

Section 42-103, Burns' 1933, being Section 2 of Chapter 124 of the Acts of 1931, provides as follows:

"The term 'license' as used in this act shall be construed to mean and include motor vehicle registration licenses, certificates of title showing the ownership of any motor vehicle, licenses authorizing persons to drive or operate motor vehicles on the public highways, either as chauffeurs or otherwise; licenses to practice any profession, trade or occupation for

the practice of which a state license as (is) required by law.”

The immediate question is, then whether the requirement of payment of the annual registration fee imposed by Chapter 254, Acts 1945 constitutes a license.

Under the provisions of Section 1, Chapter 145 of the Acts of 1899 (Section 63-1302, Burns' 1933 R. S.) the Medical Board issues a "certificate" of qualification to practice medicine in the State of Indiana which certificate thereafter is presented to the county clerk of the county in which the applicant resides. The county clerk thereupon issues a license in the form prescribed by Section 3, Chapter 169, Acts of 1897 (Section 63-1303 Burns' 1933, R. S.)

Generally speaking, a license confers on a person the right to do something which he otherwise would not have the right to do. See: 33 Am. Jur. 324 and cases cited. It is an exercise of the police power in the interest of public health, safety, welfare, etc.

See:

Eastman v. State (1886), 106 Ind. 278;

State *ex rel.* v. Green (1887), 112 Ind. 462.

There can be little question but what the certificate of registration and license issued by the county clerk are two integral parts of the sovereign exercise of licensing power (i.e. police power) in the sense that the two are necessary and prerequisite to the practice of the healing arts.

For the purpose of this opinion, I do not deem it necessary to determine whether Chapter 254 of the Acts of 1945 is an exercise of the police power of the State—that is, a third and additional requirement imposed upon the licensure which implements enforcement of the medical registration and licensing laws by providing funds for enforcement, or whether it is an exercise of the taxing power of the State for revenue purposes only. In either event, we cannot assume that said Chapter 254 imposes a requirement for an additional license upon one who already has a license. At the most, if we assume that it is an exercise of police power, it is a supplementary regulation.

I am, therefore, of the opinion that applicants for registration with the Board of Medical Registration and Examination of Indiana pursuant to the provisions of Chapter 254 are not required to present to said Board evidence of the payment of poll taxes or personal property taxes required by Chapter 124 of the Acts of 1943.

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OFFICIAL OPINION NO. 30

April 23, 1947.

Hon. A. V. Burch,  
Auditor of State,  
State House,  
Indianapolis, Indiana.

Dear Mr. Burch:

I have your letter of March 26, 1947 which reads as follows:

“There has been presented to our office for payment a voucher from Mr. Clyde R. Black, Secretary to the Indiana Flood Control and Water Resource Commission, in the amount of \$325.00 covering salary of March 11th to March 31st, 1947, for his service as secretary to this commission.

“Also, we received a salary voucher from Mr. Glenn R. Slenker, Public Councilor (B) for the Public Service Commission, in the amount of \$161.29 covering salary of March 22nd to March 31st, 1947, for his service as councilor to this commission.

“Senator Clyde R. Black, and Representative Glenn R. Slenker were both duly elected to the legislature and have received \$1,200.00 salary each which pays them to January 1, 1948. At that time they are to receive \$100.00 per month for the next calendar year.

“Can the Auditor of State legally pay the above mentioned salaries? Will you please give us your official opinion?”