DENTAL EXAMINERS, BOARD OF: Dentists—renewal of license; fees; penalties; averments of injunction; what constitutes "practicing dentistry."

November 2, 1933.

Hon. J. M. Hale,  
Secretary-Treasurer,  
Indiana State Board of Dental Examiners,  
Mount Vernon, Indiana.

Dear Sir:

I have before me your request that an official opinion issue interpreting certain sections of chapter 169, of the Acts of 1931, (p. 586 et sequi). Most pertinent of the sections of the statute is section 9, which is as follows:

"RENEWAL LICENSES ANNUALLY—NAMES AND ADDRESSES TO BE FORWARDED TO STATE BOARD ANNUALLY.—Sec. 5.—That section 9 of the first above entitled act, approved March 8, 1913, be amended to read as follows: Section 9. On or before the last day of each calendar year, each dentist now licensed or subsequently licensed to practice dentistry in any county in Indiana, shall transmit to the secretary of the state board of dental examiners said dentist's signature and address, together with a fee of two dollars and the number of his or her state board certificate, and receive therefor a renewal certificate which shall be valid only during the calendar year for which it is issued: Provided, however, That the state board of dental examiners may reduce said renewal certificate fee for any year, but such reduction must be made alike to all dentists liable to pay the same. Said renewal certificate shall be properly displayed at all times in the office of the person named as the holder of the license, and no person shall be deemed in legal practice who does not possess and display such renewal certificate. If any holder of a dental license neglects to secure the renewal certificate herein provided for within ninety days after the last day of the preceding calendar year, such neglect shall, without any action by the state board of dental examiners, automatically cancel and annul the certificate previously
granted, together with any related renewal certificate and county license: Provided, however, That any certificate or license thus canceled or annulled may be renewed by the board within a period of six months after such cancellation upon the payment of the proper renewal certificate fee and a penalty of ten dollars.” (Our italics.)

The first question presented is:

“Several dentists of Indiana have not paid their 1933 annual renewal certificate fee, and they went delinquent, and, under the law, their certificates (state board certificates) are automatically cancelled and annulled, together with any related renewal certificates and county licenses.

“These dentists also failed to take advantage of the provision in section 9, 1931 dental law, which provides that any certificate thus cancelled or annulled may be renewed by the board within a period of six months after such cancellation upon the payment of the proper renewal certificate fee and a penalty of ten dollars. That period of time has now elapsed and expired. What is the present status of such dentists? Are they not in exactly the same position as if they had never possessed a state board certificate, a renewal certificate, a county dental license?”

In my opinion, dentists whose licenses have expired, and who fail to renew or reinstate them within six months, are required to be re-examined, and new licenses issued to them in the same manner as if they had not held previous licenses. The second inquiry presented is:

“If such licensed dentists suffer their licenses to be cancelled and annulled for the reasons above stated, and fail to have same restored as provided after such cancellation, can those particular licenses be made effective thereafter? Must not new licenses be obtained as otherwise provided by law, viz., by an examination before the board, to entitle such persons to again enter the practice of dentistry in Indiana? Has the dental board under the law any alternative but to demand a new examination?”
In my opinion, new licenses must be issued upon examination, as provided by law. The old licenses become invalid after the year for which they were issued, and can only be reinstated under the law within six months. If this is not done, the law does not provide any method by which such licenses may be restored, and therefore, it would seem that the procedure would be the same as if the person had never been licensed. It seems that the dental board, under the law, has no alternative but to demand a new examination in such cases.

The third inquiry presented is:

“If such dentists in defiance of the law continue the practice of dentistry in Indiana after the cancellation and annulment of their state board certificate and related licenses, and after their failure to take advantage of the provision of the law giving them six months from date of cancellation and annulment to be reinstated upon payment of the annual registration fee and a penalty of ten dollars, what course of action is indicated for the dental board?”

Under section 6, Acts of 1931, an injunction may be procured to enjoin such person from engaging in the practice of dentistry until a valid license to practice dentistry be secured. The injunction does not relieve such person from a criminal prosecution, as already provided by law, but the remedy by injunction is in addition to the remedy now provided by criminal prosecution.

The fourth inquiry presented is:

“If injunction is indicated, is it necessary for the dental board to establish the fact that such dentists have actually engaged in the practice of dentistry since six months after cancellation and annulment of their state board certificates and related licenses, and establish such fact by witnesses, or will the fact that such dentists are keeping their offices open to the public be sufficient?”

The statute provides, in section 6, that:

“In charging any person in a complaint for injunction or in an affidavit, information or indictment, with a violation of this law by practicing dentistry without
a valid license, it shall be sufficient to charge that such person did, upon a certain day and in a certain county, engage in the practice of dentistry, he not having a valid license so to do, without averring any further or more particular facts concerning the same.”

Section 12 of the same act, defines what shall constitute “practicing dentistry” within the meaning of the act, as follows:

“Any person shall be said to be practicing dentistry within the meaning of this act who uses the word ‘dentist,’ or ‘dental surgeon,’ or the letters ‘D. D. S.’ or ‘D. M. D.,’ or other letters or titles in connection with his name, which in any way represents him as engaged in the practice of dentistry; or owns or operates a dental office, or is the manager or conductor of the same, or advertises or permits to be advertised by sign, card, circular, handbill, newspaper, radio or otherwise, that he can or will attempt to perform dental operations of any kind,” etc. (Our italics.)

Under these sections, it would be necessary for the dental board to establish that the alleged offender did one of the acts defined by the statute as constituting “practicing dentistry,” that is, that he owned or operated a dental office, or used the letters “D. D. S.” or “D. M. D.” or the words, “dentist” or “dental surgeon,” or any of the other acts set forth at some length in section 12 of the Acts of 1931. Thus, the fact that such dentist operated a dental office which was open to the public would be sufficient to prove a violation of the act, where such dentist had no license to practice dentistry.

UNEMPLOYMENT RELIEF COMM.: Poor relief funds advanced by counties—authority of county auditor with respect to tax levy for reimbursement.

November 2, 1933.

Hon. William H. Book, Director,
Governor’s Commission on Unemployment Relief,
Indianapolis, Indiana.

Dear Sir:
I have before me your letter in which you request an opinion as to the duty of county auditors with respect to the levy of