

In answer to your second question, which concerns donations to hospitals which donations are not limited to a specific purpose, I am of the opinion that gifts to a hospital without restrictions as to use of the gift do not call for a different solution. A charitable gift, without direction from the donor as to how it should be spent, is valid inasmuch as it carries with it the implied provision that it is to be used for the purposes for which the charity was organized and is being maintained. Charitable gifts are favored and must be construed by the most liberal rules that the nature of each case will permit.

Crawfordsville Trust Co., Exr., *et al.* v. Elston Bank & Trust Co., Exr., *et al.* (1940), 216 Ind. 596, 25 N. E. (2d) 626;

Quinn *et al.* v. Peoples Trust & Savings Co. *et al.* (1945), 223 Ind. 317, 60 N. E. (2d) 281.

In summary, it is my opinion that no further appropriation by other officials of government is necessary to expend moneys donated to a hospital for the specific purposes designated by the donor of the gift; or if the gift to the hospital is not limited by the donor to a specific purpose, the donor's act of giving to a hospital will raise the implied purpose that the moneys are to be expended for the purposes for which the hospital was organized and is being maintained.

OFFICIAL OPINION NO. 69

December 7, 1961

Mr. William J. Layton, Secretary
Indiana State Board of Barber Examiners
1003 Indiana State Office Building
Indianapolis 4, Indiana

Dear Mr. Layton:

Your letter requesting an Official Opinion reads in part as follows:

"We would like an official opinion as to whether or not this Board may refuse to give an examination to

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any person if we have positive proof that the applicant has committed perjury in certifying to the oath, which is a part of the application for an examination, copy of which is enclosed.”

Although you have not submitted the “Application for Examination,” enclosed with your letter, for approval by this office, I feel that it forms such an integral part of your question that I must direct a portion of this opinion to said application. The part of the application which is directly under consideration by virtue of your letter, reads as follows :

“I do hereby certify and declare that I am of good moral character and temperate habits; that I have not been convicted of a felony; that to my knowledge I have no infectious, contagious or communicable disease; that I am not addicted to the habitual use of morphine, cocaine or other habit-forming drugs; that in the event of my receiving a certificate of registration as a registered apprentice, I will not practice as an apprentice except under the immediate personal supervision of a registered barber and only in a shop where there is no other apprentice; that I have not attempted to obtain the certificate of registration for money other than the required fee or other thing of value or by fraudulent misrepresentations; that I will faithfully obey any and all requirements of law and all sanitary or other rules or regulations of the Board of Barber Examiners in the practice as an apprentice of Barbering, and that I will display my certificate of registry in a conspicuous place adjacent to or near my work chair.”

It is my opinion that this form as above quoted is improper and was not contemplated by the Legislature at the time the board was authorized to prescribe an application form by Acts of 1933, Ch. 48, Sec. 7, as found in Burns' (1951 Repl.), Section 63-307. Burns' 63-307, *supra*, contemplates that an applicant fully inform the board as to his or her background and qualifications for engaging in the practice of barbering or in practicing as an apprentice barber. In this respect an applicant should have an opportunity, and the board is entitled to know, whether or not the applicant has or has not

“been convicted of a felony” and the nature and the date of the felony and conviction thereof. It should also be important to the board to know whether or not such applicant has *ever* had any “infectious, contagious or communicable disease” or has *ever* been “addicted to the habitual use of morphine, cocaine or other habit-forming drugs.” From a full disclosure by the applicant with respect to these matters, the board will be able to determine the “good moral character and temperate habits” of the applicant and will be able to determine his eligibility for the proposed registration.

The statement presently incorporated as a part of the board’s “Application for Examination,” as quoted above, is an affirmative present denial of matters important for the board’s consideration. The application makes no request for, nor does it give the applicant an opportunity to disclose, any background facts with respect to these matters.

In my opinion, a proper form for all applicants desiring a certificate of registration, issued by the Indiana State Board of Barber Examiners, would set out these matters as *questions* in the body of the application, thereby giving the applicant full opportunity to disclose his background. The answers to these questions must be subscribed and sworn to as true and any false statements or misrepresentations made in the application would be subject to the discretion of the board as hereinafter described.

Your specific question concerns the authority of the board to refuse to give an examination to an applicant who has submitted his application in the form now being used by the board, under oath, and the board finds that a statement made in the application is in fact false, untrue and a misrepresentation of the true facts.

By virtue of the Acts of 1933, Ch. 48, Sec. 14, as amended, and as found in Burns’ (1951 Repl.), Section 63-314 the Indiana State Board of Barber Examiners is given the authority to refuse to issue or renew any certificate of registration. This statute is applicable to your question and reads in part as follows:

“The board shall either refuse to issue or renew or shall suspend or revoke any certificate of registration for any one [1] or combination of the following causes:

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“(1) Conviction of a felony shown by a certified copy of the record of the court of conviction.

* * *

“(7) Immoral or unprofessional conduct.”

The general problem of issuance or revocation of a license for fraud or other misconduct is discussed at some length in an annotation in 165 A. L. R., page 1138. At page 1139 the following statement is made:

“Many of the requirements which an applicant must meet in order to secure a license vary considerably, depending upon the particular type of activity authorized, as, for example, the practice of dentistry or medicine, the practice of law, or traffic in liquor, but in all of them a certain degree of honesty and integrity—not perhaps exactly the same degree in all cases—is required. In exercising his discretionary power as to the issuance or denial of a license, the licensing officer or body should give attention to the moral fitness of the applicant, as shown by his prior conduct.”

A problem of similar nature was under consideration by the Indiana Supreme Court in the case of *In re McDonald* (1928), 200 Ind. 424, 164 N. E. 261. In this case the applicant exhibited his license to practice law from another state without revealing that his license had been revoked in the other state. In the disbarment proceedings before the Indiana Supreme Court, based upon the above and foregoing facts, our Court stated at page 429:

“The use of the Kentucky license before the committee had the practical effect of a representation that appellant was then a member of the bar of Kentucky in good standing, when in truth he was not, and the withholding of any explanation concerning his disbarment in Kentucky, coupled with his affirmative acts, has been held sufficient in many jurisdictions to show inexcusable deception practiced upon the court, and a sufficient cause for revoking the order admitting him.”

Although I have found no cases directly in point, a review of the cases and material found in 165 A. L. R. 1138, *supra*, as

well as the decision of the Indiana Supreme Court in the case of *In re McDonald, supra*, I am of the opinion that an applicant for registration as a barber, or as an apprentice barber, who perjures himself on his application is guilty of immoral conduct within the meaning of the provision of Burns' 63-314, *supra*. In such instances the board would be authorized to refuse to give such applicant the right to take an examination and to receive a certificate of registration, subject to the requirement that such refusal follow a determination made by the board at a hearing required by law. The refusal to permit an applicant to take an examination is tantamount to a refusal to issue a certificate of registration because of the fact that the examination is made a condition precedent to registration by virtue of Acts of 1933, Ch. 48, Sec. 8, as found in Burns' (1951 Repl.), Section 63-308.

Therefore, in answer to your question, it is my opinion that the Indiana State Board of Barber Examiners may refuse to give an examination to any applicant where such applicant has committed perjury in connection with his application for registration, subject, however, to the requirement that said board afford such applicant a hearing pursuant to law.

OFFICIAL OPINION NO. 70

December 8, 1961

Miss Ruth V. Kirk
Executive Secretary
State Board of Medical Registration and
Examination of Indiana
1021 State Office Building
Indianapolis 4, Indiana

Dear Miss Kirk:

Your letter of November 27, 1961, has been received and reads as follows:

"The Board of Medical Registration and Examination of Indiana in Executive Session on November 15, 1961 directed the writer to request an official opinion from you regarding Chapter 79, Acts of 1961, as it