



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

Grover Sellers

~~W. H. COXSON~~
ATTORNEY GENERAL

Honorable Nelson Greeman, Secretary-Treasurer
Texas State Board of Examiners in Optometry
Majestic Building
San Antonio, Texas

Dear Sir:

Opinion No. 0-6900

Re: Whether under the facts presented registrant for apprenticeship through the study of optometry not less than two years in the office of a licensed optometrist has waived his rights under the provisions of Title 71, Chapter 10 of the Revised Civil Statutes of Texas, 1925.

We have fully considered your request for our opinion by letter dated April 18, 1946, enclosing therewith your file relating to a particular applicant. We thank you for the additional information furnished under date of June 19th, 1946 at our request. Having reviewed the authorities which we hereinafter discuss, together with the file with the additional information which we are returning to you herewith, we have concluded that your request presents the sole questions set forth in the above caption which we may consider the only issue presently existing between the applicant and the Texas State Board of Examiners in Optometry, to be passed on by us in keeping with your request.

Your file exhibits what applicant apparently relies on as an application received by the Secretary of the Board on August 19, 1938, which application you state was not accepted, as being on the wrong form mailed to applicant by the Secretary of the Board through error. Under date of August 22, 1938, applicant was so informed and proper application was directed to him. The Secretary's file does not reflect that this application form was ever returned by applicant or received by the Secretary of the Board.

There is shown in the file, however, a letter dated July 28, 1939, addressed to Dr. R. B. Hodges, Secretary, Texas State Board of Examiners, 813 Houston Street, Fort Worth, Texas, which letter we hereinafter quote as follows:

"Dear Dr. Hodges:

"It is my intention to continue my study of optometry under Dr. O. W. White.

"Under the new Texas Optometry Law which was signed by Governor Lee O'Daniel, I am to notify the Secretary of the Board of same within 30 days after effective date.

"Kindly register my name under the provision provided for by the law so that I will come under the provisions of Chapter 51, acts of the Thirty-seventh Legislature, First called Session.

"Thanking you to give this your attention.

Sincerely,

(signed by applicant)"

The pertinent articles of Chapter 10, Title 71 of the Revised Civil Statutes of 1925, prior to their amendment in 1939 are Articles 4556, 4557, and 4559 with Article 4557 being subsequently amended in 1945. These articles as they existed in the Revised Civil Statutes of 1925, taken from the original act of 1921, are as follows:

"Art. 4556. Record of proceedings.--The Board shall preserve a record of its proceedings in a book kept for that purpose, showing the name, age, place and present residence of each applicant, the name and location of any school of optometry from which he holds credentials, and the time devoted to the study and practice of same, together with such other information as the board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters contained therein. The secretary of the board shall on March first of each year send a certified copy of said record to the Secretary of State for permanent record a certified copy from which, with hand and seal of the secretary of said board, or the Secretary of State, shall be admitted as evidence in all courts. When a license or certificate is issued it shall be numbered and recorded in a book kept by the secretary of the board."

"Art. 4557. Application for license.--Whoever desires to begin the practice of optometry shall

make application for license by presenting to the secretary of the board, on forms furnished by the board, satisfactory sworn evidence that he or she has attained the age of twenty-one years, is of good moral character, and has graduated from a school of optometry maintaining a standard which meets with the requirements of said board, or has studied optometry in Texas not less than two years in the office of an optometrist licensed under this law before taking the examination which shall be prescribed by the board."

"Art. 4559. Examinations.--Each applicant shall be given due notice of the date and place of examination. All examinations shall be conducted in writing and by such other means as the board shall determine adequate to ascertain the qualifications of applicants, and in such manner as shall be entirely fair and impartial to all individuals and every recognized school of optometry. All applicants examined at the same time shall be given identical questions. The board may refuse to admit persons to its examination or to issue licenses for any of the following reasons:

"1. The presentation to the board of any untrue statement or any document or testimony which was illegally or fraudulently obtained, or when fraud or deceit has been practiced in passing the examination.

"2. Conviction of a felony, or of a misdemeanor which involves moral turpitude.

"3. Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public, or for habits of intemperance or drug addiction. . ."

The 46th Legislature, Acts of 1939, amended Article 4559, supra, adding the following proviso:

"Provided that no provision of this section (Act) shall apply to any qualified person who in good faith began the study of optometry under the provisions of Chapter 51, Acts of the Thirty-seventh Legislature, First Called Session, prior to the effective date of this Act, and who shall, within thirty (30) days after such effective date, register with the Secretary of the Board, under proper rules of the Board, satisfactory proof of the be-

ginning of such study, together with such other related facts as the Board may require. Any person failing to register with the Secretary to the Board as herein provided shall be deemed to have waived all rights under the provisions of Chapter 51, Acts Thirty-seventh Legislature, First Called Session."

Later in amending Article 4557 which Article was also amended by the 46th Legislature, Acts of 1939, but which amendment we consider immaterial to the question before us, the 49th Legislature, Acts 1945, Chapter 313, expressly provided that no provision of the section as amended shall apply to any qualified person who in good faith began the study of optometry and so filed intention with the Texas State Board of Examiners in Optometry under the provisions of Title 71, Chapter 10 of the Revised Civil Statutes of Texas, 1925, as amended, prior to the effective date of this Act. It further provides that such applicant must register within the time specified. A letter appearing in the file from the applicant, dated June 28th, 1945, and addressed to the Secretary of the Board, appears to substantially meet this requirement of registering, being received within 30 days from June 2nd, 1945, effective date of the amendment.

We are mindful that the original act of 1921, Article 4553, Revised Civil Statutes, 1925, vests in the Board authority to prescribe rules, regulations, and by-laws in harmony with the provisions of this chapter for its own proceedings and government and for the examination of applicants for license to practice optometry. The present file, however, does not disclose sufficient evidence or any rules, regulations, or by-laws sufficient to cut off applicant's rights sought to be preserved under Chapter 10, Title 71 of the Revised Civil Statutes, 1925.

It is the considered opinion of the department under the facts presented and authorities above cited that the applicant has substantially complied with the requirements and is entitled to be recognized as a registrant under and subject to the provisions of Chapter 51, Acts 37th Legislature, First Called Session, being Title 71, Chapter 10 of the Revised Civil Statutes of 1925. Upon furnishing to the Board satisfactory sworn evidence that he has attained the age of 21 years, is of good moral character, and in good faith began the study of optometry on August 19, 1938, under Chapter 10, Title 71, Revised Civil Statutes, 1925, and accordingly satisfies the Board that he has studied optometry in Texas not less than 2 years in the office of an optometrist licensed under the law, applicant should be permitted to take the examination.

APPROVED JULY 5, 1946
Carlos C. Ashley
First Assistant Attorney General

Yours very truly,
ATTORNEY GENERAL OF TEXAS

WJRK/JCP

By Wm. J. R. King
Assistant