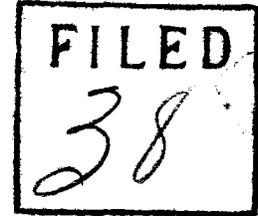


BOARD OF OPTOMETRY: Not authorized under certain conditions to
POWERS: subpoena optometrist o makes slanderous
remarks.

June 7, 1943

6/11



Missouri State Board of Optometry
C/O Dr. N. R. Hatfield
Secretary-Treasurer
Edina, Missouri

Gentlemen:

This will acknowledge receipt of your request, for
an official opinion under date of May 27, which reads:

"It has come to the official attention
of the State Board of Optometry that
a certain optometrist in the state has
made charges that a member of our Board
is giving out diplomas to men who did
not attend school'.

Since such an accusation impugns the of-
ficial conduct of a Board member directly
and that of the entire Board indirectly,
the Board desires to subpoena the man be-
fore us and to have him present his evi-
dence. We have been advised that the
Board can do this pursuant to Section
10110 of the Revised Statutes of Missouri
1939, which gives the Board power 'to take
testimony in all matters relating to its
powers and duties'.

"Please let us have your opinion as to
whether we have the legal power to do so."

It is a well established principle of law that any
Board, Bureau or Commission being a creature of statute
shall have only such powers as may be conferred upon said
Board, Bureau or Commission by statute. In Aetna Insurance
Company vs. O'Malley, 124 S. W. (2d) 1164, l. c. 1166 the
court said:

"* * * * * 59 C. J., section 285, page 172, section 286. In the last citation the author says: 'Public officers have an can exercise only such powers as are conferred on them by law, * * * * * .'"

It is true that you may subpoena witnesses, books, papers, etc., and take testimony in all matters relating to powers and duties of the Board, but for no other purposes. Section 10110, R. S. Missouri 1939, reads in part:

"* * * * * The said board shall prescribe the duties of its officers and adopt rules and regulations, not inconsistent with this chapter, to govern its proceedings; and also shall adopt a seal; and the secretary shall have the care and custody thereof, and he shall keep the record of all the proceedings of said board, which shall be open at all times to public scrutiny. All certificates issued by the state board of optometry shall be signed by the president and attested by the secretary with the seal of said board attached to or impressed thereon. Every such certificate shall be prima facie evidence of the right of the holder to practice optometry. The president and secretary shall have the power to administer oaths and the board to take testimony in all matters relating to its powers and duties, and for that purpose shall be able to compel the attendance of witnesses and the production of all necessary books, papers, or documents, upon the proper service of a subpoena in proper form, duly attested. * * * * *"

Regardless of whatever this member of your profession may have said relative to one member of your Board giving out diplomas to persons who did not attend school, it does not in any manner of imagination have any direct or indirect bearing upon the action of the Board to issue licenses and suspend or revoke said licenses under such statutory authority vested in said Board. Neither is this a statutory ground for the Board's revoking or suspending a license.

Section 10121, R. S. Missouri 1939, prescribes on what

grounds the Board may refuse to issue, renew, suspend or revoke licenses, and no such reason as complained of in your letter is included therein.

"The state board of optometry may either refuse to issue, or may refuse to renew, or may suspend, or may revoke any certificate of registration for any one or any combination, of the following causes:

"(a) Conviction of a felony, as shown by a certified copy of the record of the court of conviction.

"(b) The obtaining of or an attempt to obtain, a certificate of registration, or practice in the profession, or money, or any other thing of value, by fraudulent misrepresentation.

"(c) Gross malpractice.

"(d) Continued practice by a person knowingly having an infectious or contagious disease.

"(e) Advertising by means of knowingly false or deceptive statements.

"(f) Advertising, practicing or attempting to practice under a name other than one's own.

"(g) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine or other habit-forming drugs. The state board of optometry may neither refuse to issue, nor refuse to renew, nor suspend, nor revoke, any certificate of registration, however, for any of these causes, unless the person accused has been given at least 20 days' notice in writing of the charge against him and a public hearing by the state board of optometry. Upon the hearing of any such proceeding, the state board of optometry may administer oaths, and may procure by its subpoena, the attendance of witnesses and the production of relevant books and papers. Any circuit court or any judge of a circuit court,

June 7, 1943

either in term time or in vacation, upon application either of the accused or of the state board of optometry may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the state board of optometry in any hearing relating to the refusal, suspension or revocation of certificate of registration. Upon refusal of neglect to obey the order of the court or judge, the court or judge may compel, by proceedings for contempt of court, obedience of its or his order."

This member may have an action for slander against this party for what he said against said member. However, this is a personal matter between the member of the Board and the person accused of the slander. Such an action, even if supported by substantial evidence, is often difficult to maintain.

Therefore, it is the opinion of this Department that, under the facts contained in your request, the Missouri State Board of Optometry is not authorized to subpoena this optometrist who is accused of making such remarks against a member of said Board, and thereby have him testify, since such evidence would not afford the Board any grounds for refusing, suspending or revoking his license to practice the profession of optometry.

Respectfully submitted

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General of Missouri

ARR:EAW