

BARBER BOARD: Barber with revoked license may apply for renewal within 90 days of revocation.



June 5, 1946

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Mr. J. E. Johnston, President
State Board of Barber Examiners
#1 West Linwood Boulevard
Kansas City 2, Missouri

Dear Sir:

This acknowledges your request, which is as follows:

"I am writing you of a case involving the Barber Board and two barbers: Jasper Bruner and Charles Avery. These men's Barber Licenses were revoked in 1943 by the former Board. They obtained an injunction against the Board at that time, refraining the Board from molesting them in any way. This restraining order held until January 7th of this year, when it was dissolved. These men continued working at the Barber trade until about April 25th, when they were notified by the Prosecutor's Office that if they did not cease working, they would be arrested. They were also instructed that they must appear before the Board and have their case reheard before they could obtain a license.

"There are two primary points involved:
1. Under the law, if a man's license lapses for two years, he must appear before the Board and make a passing grade on the Examination before a license can be issued to him.

"2. Under the law, if a man's license is revoked, he must cease working and cannot

have his case reheard under a period of ninety days.

"In your opinion, would these men be eligible to ask for a rehearing of their case immediately, or should they wait ninety days from the time that they ceased working, and would the Board be justified in making them take the Examination and making a passing grade before issuing their licenses?"

Replying thereto, it is noted that you state their licenses were revoked in 1943. Your letter further states: "They obtained an injunction against the Board at that time, refraining the Board from molesting them in any way. This restraining order held until January 7th of this year, when it was dissolved." You do not state the details of the court proceedings wherein the restraining order was issued, nor do you state the alleged grounds of same.

If the restraining order had been issued while the proceedings of the Board were being had to revoke the licenses, it would have had the effect of preventing the Board from taking further action toward revoking and from revoking said licenses until after the restraining order was dissolved. However, absent specific detailed information of the court proceedings, we take at face value your statement that "These men's Barber Licenses were revoked in 1943 by the former Board." If so, then the certificates have been revoked more than ninety days.

Section 10137, R.S. Mo. 1939, provides as follows:

"Said board shall have power to revoke any certificate of registration or permit granted by it under this chapter for conviction of crime, habitual drunkenness, gross incompetency, failure or refusal to properly provide or guard against contagious or infectious disease, or the spreading thereof, in the practice of the occupation aforesaid, or violation of the rules of the board mentioned in section 10128 of this chapter, or for any extortion or overcharge practiced: Provided, that before

any certificate or permit mentioned in this chapter shall be so revoked, the holder thereof shall have notice, in writing, of the charge or charges against him, and shall, at the day specified in said notice, at least five days after the service thereof, be given a public hearing on said charges and full opportunity to produce testimony in his behalf and to confront the witnesses against him. Any person, firm or corporation whose certificate or permit has been so revoked may, after the expiration of ninety days, apply to have same reissued upon a satisfactory showing that the disqualification has ceased."

It will be observed that the above statute provides that "Any person, * * * * whose certificate or permit has been so revoked may, after the expiration of ninety days, apply to have same reissued upon a satisfactory showing that the disqualification has ceased."

The words "so revoked" in said statute refer to the preceding part of said section which specifies the grounds on which licenses may be revoked, the procedure therefor, including written notice thereof of not less than five days, public hearing, full opportunity to produce testimony in the applicant's behalf and to confront the witnesses against him.

The fact that the two men you mention continued working at the barber trade without a license and after the licenses had been revoked, and that they so worked until April 25, 1946, will not in itself be a valid reason for denying their application to have their licenses reissued until "after the expiration of ninety days" from the time they actually ceased their labors as barbers. They may have been violating the law when they continued barbering after revocation of their licenses, but the above statute does not say that that is a reason why they cannot apply for a reissuance of their licenses.

The court proceedings you mention, including the restraining order which was operative from just after the revocation in 1945 of the licenses until January 7, 1946, have no bearing on the right of said two men to apply for reissuance of their

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licenses. The statute fixes the beginning of the ninety day period as the date their licenses were revoked, and you say that was in 1943.

Section 10132, R.S. Mo. 1939, provides:

" * * * * any barber failing to renew his certificate of registration for a period exceeding two years and desiring to be re-registered as a barber in this state will be required to appear before said board and pass a satisfactory examination as to his qualifications to practice said occupation and shall pay to the treasurer of said board the regular examination fee * * * *"

As the licenses here considered were revoked in 1943, more than two years have elapsed and the Board should, before issuing or renewing said licenses, require examination and satisfactory showing as called for in the above Section 10132.

Conclusion.

It is our opinion that a barber whose license was revoked in 1943 under the provisions of Section 10137, R.S. Mo. 1939, and who thereafter procured a restraining order against molestation by the Barber Board, which order was dissolved January 7, 1946, and who worked in said barber trade until about April 25, 1946, and who desires to make application to have his license reissued, is entitled at this time to make such application, and before issuing or renewing said licenses, the Board should require examination and satisfactory showing.

Very truly yours,

DRAKE WATSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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