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PODIATRISTS: It would be a valid exercise of the inherent
LICENSES: police power of the state to adopt legis-
lation requiring a reasonable "continuing
education" program in the field of podiatry as a condition to annual
registration.

Opinion No. 410-1968

December 5, 1968



Mr. Frank Fulkerson, D.S.C.
Missouri State Board of Podiatry
920 Locust Street
Chillicothe, Missouri 64601

Dear Dr. Fulkerson:

Your letter under date of October 14, 1968 concerning a
continuing education program has been referred to me for attention.

You state in your letter:

"For some time, it has been the desire
of the Board to introduce legislation
which will require a 'continuing educa-
tion' program on the part of members of
our profession, for with the rapid strides
in all phases of medical care, one must
attend scientific meetings, seminars,
post-graduate courses, etc, if he is to
practice in the best interests of his
patients."

Article III, Section 1 of the Missouri Constitution vests the
legislative power in the "General Assembly of the State of Missouri".
For sake of simplicity, we shall refer to it as "Legislature".

A major function of the Legislature is the maintenance of
safety of the citizens of the state and here as such safety is re-
lated to the practice of the healing professions. The legal con-
cept of such function is based upon the right of the state to exer-
cise its police power. There has never been any serious doubt as
to such regulatory power herein referred to as being applicable
to the healing professions. See 70 C.J.S., Para. 3(a) et seq, P. 819.

The Legislature in performance of this basic function has
enacted Chapter 330, RSMo. This chapter deals with "Chiropodists".

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Section 330.030 of the statute sets out the basic requirements for the issuance of licenses and Section 330.070 sets out rules for annual registration. I am not quoting from these sections since I am certain you are familiar with their provisions.

Such regulations and requirements must bear a reasonable relationship to the particular public welfare to be safeguarded. Moreover, such regulations must not be arbitrary. These regulations must be administered and consequently the legislature has created the State Board of Chiropody or Podiatry to administer the provisions of Chapter 330.

The State Board of Podiatry must confine its rules and regulations to the area of the statutes authorizing it and can exercise only the powers the legislature has conferred upon it. State ex rel Johnson vs. Lutz, Mo., 38 SW 323; State of Missouri ex rel Hurowitz vs. North, 46 S Ct. 384. With reference to this aspect, our research led us to the case of State ex rel Inscho vs. Missouri Dental Board, 98 SW2d 606. The court stated that the State Dental Board was without power to revoke a certificate of registration because in their opinion a registered dentist failed in some phase of dentistry or in some instance or certain cases to do work commensurate with standards of skill which members of board deem proper standard of efficiency. This case is one of many and the authority is prevailing that the administrative body must stay within the bounds of its powers outlined in the statutes.

Frequently the constitutionality of decisions of administrative bodies and statutes such as Chapter 330 is challenged either on the basis of denial of due process or denial of equal protection of the law. The Supreme Court of the United States has stated:

"A statute which places all physicians in a single class and prescribes a uniform standard of professional attainment and conduct, as a condition of the practice of their profession, and a reasonable procedure applicable to them as a class to insure conformity to that standard, does not deny the equal protection of the laws within the meaning of the 14th Amendment." (Emphasis added)

In the case of Gamble vs. Board of Osteopathic Examiners of California et al, 130 P 2d 382, the Supreme Court of California commented concerning a California statute which made it a requirement "of each person licensed by the Osteopathic Board to submit evidence that he completed during the preceding year a minimum of thirty hours of professional education work...."

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The comment is as follows:

"the power to regulate the treatment of disease is an elastic one and regulation may vary according to the schools or methods of practice so long as they entail no unreasonable discrimination."

We also refer you to the case of State ex rel Week et al vs. State Board of Examiners in Chiropractic et al, 30 NW 2d 187, wherein the Supreme Court of Wisconsin stated:

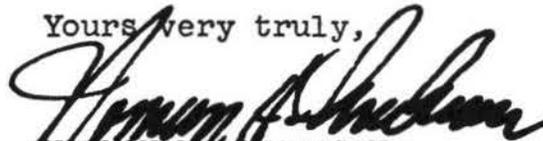
"The state has power to provide for the general welfare of its people and in so doing to prescribe reasonable qualifications to be complied with before a person may engage in or carry on any trade or profession. The fact that a person is once licensed does not create a vested property right in the licensee, as advancements in the trade or profession may require additional conditions to be complied with if the general welfare of the public is to be protected."

CONCLUSION

It would be a valid exercise of the inherent police power of the state to adopt legislation requiring a reasonable "continuing education" program in the field of podiatry as a condition to annual registration.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Daniel P. Hough, Jr.

Yours very truly,


NORMAN H. ANDERSON
Attorney General