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Opinion No. 646
R-74
January 28, 1964

REQUESTED BY: THE HONORABLE SOL AHEE
State Senator

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTIONS:

1. Are Sections 8,9 and 10, Article 3, Rules and Regulations, State Board of Funeral Directors and Embalmers insofar as they apply to a separate examination for a funeral director's license valid in the light of A.R.S. §32-1305 (b), and §§ 32-1330 through 32-1333 ?
2. Are the provisions of Section 12(c), Article 3, valid insofar as they require equality between states for the issuance of reciprocal licenses ?
 - a. at the time of issuance of the applicant's license in the other state ?
 - b. as exacting and demanding as those set forth in the law of Arizona, and
 - c. that the rules and regulations of the other states be equal to the rules of this Board ?

ANSWERS:

1. No.
2.
 - a. No.
 - b. Yes.
 - c. No.

See body of opinion.

I

It is to be noted at the outset that this first question relates only to funeral director examinations required by Section 8 and administered by Sections 9 and 10. Insofar as Sections 9 and 10 deal with embalmer's licenses, they are not affected hereby or considered herein.

A.R.S. §32-1305 (b) relating to the rule-making powers of the Board reads as follows:

" § 32-1305. POWERS AND DUTIES OF THE BOARD

* * *

- b. The board shall adopt rules and regulations consistent with the provisions of this chapter, which shall be uniform in application and effect, for the practice of funeral directing and embalming. The rules and regulations shall be binding upon all funeral directors, embalmers and apprentice embalmers."

This office by an opinion issued in 1960, No. 61-3, clearly held that the State Board of Funeral Directors and Embalmers was not empowered to require an examination of applicants for a funeral director's license. It appears that the reasoning of that position is correct and we affirm the opinion. It has been suggested that an examination may be given as part of the investigation provided under A.R.S. §32-1331, but it is our belief that this investigation and examination cannot be used as a subterfuge to set up a substantial and basic requirement for licensing not contained in the statute.

II

This section deals solely with the issuance of licenses by reciprocity and, of course, would cover both embalmers and funeral directors. The intent of all reciprocity statutes is three-fold: (a) to protect Arizona citizens from evils which might be wrought by truly unqualified (in the generic sense) practitioners merely because the practitioner comes from another state and has some sort of certificate; (b) to prevent the exclusion of truly qualified (once again in the generic sense) practitioners from establishing themselves here merely because they come from another state; and (c) to insure that Arizona practitioners, who may move to another state, will be as fairly treated. The thrust of any such statute is protection of the public not merely protection of a local industry or local practitioners. As a police power

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statute it should be interpreted to do the job it was intended to do, but not even this will allow an interpretation contrary to the words of the statute.

With this in mind we consider the first problem. It is stated in the rules that the Board shall issue licenses on reciprocal application where the requirements of the state in which the applicant was licensed "were at the time of the issuance and are now" equal to the standards of Arizona. The problem usually becomes a factual one and can best be explained by example. If an applicant comes into Arizona and shows a valid certificate from state "X" issued in 1936, what can the Board do? Assuming that in both 1936 and now the requirements of that state were loose and did not meet Arizona standards now, the applicant cannot be administered by reciprocity, he must qualify as an original applicant. Assuming, further that state "X" changed its qualifications after the issuance of the applicant's original license and now they are equal to Arizona's standards, in all probability under a grandfather clause of the other state, an applicant was allowed to keep his license. Our present statute in 1945 contained no such clause and all embalmers in the state by the literal terms of the law were required to take an examination. It is believed, however, that no such application of the law was enforced for the reason that it was totally impractical if not impossible to do. All embalming in the state would have to come to a halt until examinations were taken and corrected. Therefore, we must assume that an Arizona licensee embalmer who had his certificate from before 1945 or even before 1931 would be allowed to keep it and even apply for a funeral director's license. It would seem appropriate, therefore, that an out-of-state embalmer who received his certificate at a time when his state standards were not as high as ours, then or now, but who holds his license in a written or unwritten grandfather clause must be accorded reciprocity as long as his home state's present standards are as high as Arizona. After all if he could not now meet his present state's high standards disciplinary action could be taken.

No other interpretation can be given to the words of the statute "are equal." If the Legislature had intended the meaning contained in the rules "were at the time of issuance

. . . as exacting and demanding" they would have said so.
See for example the following:

CERTIFIED PUBLIC ACCOUNTANTS: A.R.S.

§32-727 (a) (1):

"If the standards under which the applicant received the certificate were . . . as high as the standards required by this state."

CHIROPODISTS: A.R.S. §32-827 (a) (2):

"The requirements in such state or country were, at the date of registration or licensing, substantially equal to those the in force in this state."

CHIROPRACTORS: A.R.S. §32-922 (c):

"Persons licensed in another state or country under equivalent requirements"

COLLECTION AGENCIES: A.R.S. §32-1024

(1):

"Requirements for securing the license were, at the time of issuance, substantially the same or equal to requirements imposed by this chapter."

The above citations are just by way of example and not intended to be complete.

It would, therefore, seem that the Legislature has spoken one way where it clearly could have spoken another and that the Board cannot change this obvious mandate. Any change or request for a change must be directed to and come from the Legislature and its consideration of the area. Rule 12(c) insofar as it purports to demand that the license requirements of another state "were at the time of the issuance of the applicant's license" substantially equal to that of Arizona is in conflict with the statute and therefore invalid.

The next heading under Rule 12(c) is concerned with the use of the words equalization standards between states as

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"exacting and demanding" as the standards of Arizona. If the rule said "more exacting and demanding" or "less exacting and demanding" then there would be an inequality and a conflict with A.R.S. §32-1333. But it appears as a matter of semantics that the word "equal" is correctly paraphrased by the words "as exacting and demanding."

It must be realized that rigid mathematical exactitude of an equality can never be achieved or demanded and that substantial equality is all that is called for. Hence, substantially as exacting and demanding standards are all that the Board can require, but the common practice under the rules and regulations of substituting or adding words or phrases to clarify a statute does not void the rule as long as the substitution or addition does not change the net effect. We cannot say that it does to here and we are therefore of the opinion that that portion of Rule 12(c) is not invalid.

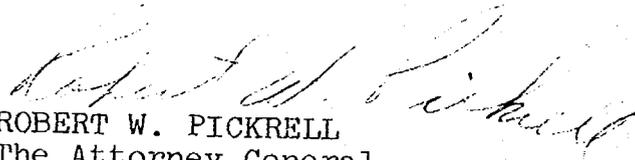
The final question relates to the requirements for reciprocal licensing contained in Rule 12(c) that the requirements for the issuance of the licenses on a reciprocal basis includes equality not only with the statutes of Arizona but the rules of the Board also. In other words, application for reciprocity must show that the rules and regulations of whatever agency administers the same law in its state are substantially equal to the rules and regulations of the Arizona Board. The statute itself only demands "requirements . . . equal to those prescribed in this chapter." Although the authority to make rules is granted in the chapter, the rules are not "prescribed" in this chapter. "Prescribed" means matters actually written down in the law or arrived at by necessary implication from that which is written down. The rules and regulations are guidelines and directives for day-to-day enforcement and are not basic qualifications for practice. Since the Legislature has in the statute itself prescribed what the qualifications shall be, there is no necessity for requiring administrative equality. After all, why should there be equality between states on the number of board meetings a year (Article 2, Section 1), the duties of the various officers (Article 1, Sections 5, 6 and 7), the time for investigation of an application (Article 3, Section 4), the date or even the number of examinations given each

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year (Article 2, Section 5), to mention only a few matters contained in the rules. We realize that the Board is concerned with the matters of more substantial regulatory control contained in Article 7. But the matters contained in Article 7, can in effect, be made part of reciprocity by including them in the examination given to local applicants. If they are in our examinations then they must also be substantially contained in the examination given in the other state. In any event those matters are subject to the disciplinary control of the Board in its routine administration of the law or by the Department of Health.

It, therefore, appears that the requirement of equality between the rules of this Board and the rules of an out-of-state board is contrary to the statute insofar as Rule 12(c) so states, said rule is invalid.

We trust this answers your question.


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