

January 16, 1950

Governor Dan E. Garvey
State of Arizona
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Governor Garvey:

We have your letter of January 12 relating to Chapter 121, laws of 1949 (Senate Bill 100). In the letter you state you have appointed Mr. Richard G. Darrow, lay member of the Board of Examiners in Osteopathy. We also have a letter to you from Mr. Darrow, wherein he appears to be in doubt as to whether he can qualify under the provisions of the Act. Mr. Darrow states:

"I do have a great deal of interest in several persons practicing the healing arts. I am the attorney for the Tucson General Hospital, an osteopathic institution, in a purely business capacity. My son is a doctor of osteopathy and my mother is a doctor of medicine. I have numerous close friends and clients who are connected with osteopathy and medicine, and Dr. Shaffer of Tucson is a very close friend of mine. He is both a chiropractor and a naturopath."

Section 1 of said Chapter (Section 67-2123 AC⁴, Supplement) creates a board of five members, fixes their terms, and provides:

"* * * One (1) member of the board shall be a member of the lay public not in any manner connected with, or having an interest in, any school of medicine or any person practicing any form of healing or treatment of bodily or mental ailments and who shall have demonstrated an interest in the health problems of the state.

* * * * *

Each board member, prior to entering upon his duties shall take oath prescribed by law and in addition thereto shall make oath as to his qualifications as prescribed herein.
* * *"

The part of said section above quoted is awkwardly worded, confusing and misleading, if given a literal interpretation might lead to unreasonableness and absurdity and make it difficult to find one qualified as a lay member of the Board. Literally interpreted it could mean if a person was interested in his family physician or any other person engaged in the healing arts he would be disqualified for lay membership. This interpretation is inconsistent with another qualification to lay membership, that is, the member must have demonstrated an interest in the health problems of the State. We cannot see how a person could have demonstrated his interest in health problems, if he is not interested in persons engaged in the practice of the healing arts.

Section 1-101 ACA 1939 provides in part as follows:

" * * * Statutes should be liberally construed to effect their objects * * * "

A primary rule of construction or interpretation of statutes is to arrive at, and give effect to the legislative intent, 50 Am.Jur. p. 201, and give it a reasonable interpretation rather than an absurd or unreasonable one, and should be interpreted so as to give it a meaning which will accomplish the purpose intended.

50 Am.Jur., pp. 358-9 lays down the rule as follows:

"* * * Hence, it is a general principle, embodied in the maxim, 'ut res magis valeat quam pereat,' that the courts should, if reasonably possible to do so without violence to the spirit and language of an act, so interpret the statute or the provision being construed, as to give it efficient operation and effect as a whole. An interpretation should, if possible, be avoided, under which the statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative, or nugatory."

Another rule stated in the same work, Vol. 50, pp. 372-3:

"* * * Frequently, the undesirable or mischievous consequences of a different construction are used by the courts to indicate the correctness of the interpretation adopted by them by the application of other rules of construction. Similarly, courts sometimes take the time and space to refute the undesirable consequence claimed to attach to a statute under an interpretation of it favored by the courts. Indeed, there are cases in which the consequences of a particular construction are, in and of themselves, conclusive as to the correct solution of the question. In any event, it is generally regarded as permissible to consider the consequences of a proposed interpretation of a statute, where the act is ambiguous in terms and fairly susceptible of two constructions. * * *"

With these rules in mind let us see what the legislative intent was when it enacted Section 1 of the Act. It is clear to us the legislature intended a board of five members consisting of four men engaged in the practice of the profession to be regulated, and one member, not belonging to any profession engaged in the healing arts, should be a representative of the lay public. If we adopt this interpretation we substitute "a" for the word "any" in the fifth line of the section and then the Act will be given a meaning within the intent, and a reasonable rather than an unreasonable or absurd meaning.

We think the section should be interpreted to mean the lay member: (1) Shall not be connected with or have an interest in any school of medicine; (2) Shall not be a person practicing any of the healing arts by the treatment of bodily or mental ailments, or, in other words, not engaged in the practice of the profession of any of the healing arts; and, (3) Shall have demonstrated an interest in the health problems of Arizona.

Therefore, if Mr. Darrow is not interested in or connected with any school of medicine, is not engaged in the

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practice of any of the professions engaged in the healing arts, and has demonstrated an interest in the health problems of Arizona, he is eligible to appointment as lay representative on the Board and may legally qualify for such place. We do not think his representation of a hospital in legal matters has any bearing on his eligibility.

We have not examined the form of supplemental affidavit required by said Act, but if it does not conform to the interpretation we place on the Act, we suggest it be changed to conform thereto.

We return to you Mr. Darrow's letter, and a copy of this opinion for Mr. Darrow.

Yours very truly,

FRED O. WILSON
Attorney General

EARL ANDERSON
Assistant Attorney General

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