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March 13, 1981

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INTERAGENCY

George Sanchez, O.D., Secretary
Arizona State Board of Optometry
Room 418
1645 West Jefferson
Phoenix, Arizona 85007

Addendum I81-033 (R80-206)

Dear Dr. Sanchez:

In the above-mentioned opinion, we said that a licensee who has not practiced optometry in this state for a five-year period is required to pass an initial licensing examination before his license is renewed. Although the language of the statute and our opinion is not totally clear, our opinion is directed at only those persons who have not been engaged in the practice of optometry for at least 4 of the 5 years prior to license renewal, A.R.S. § 32-1723. We do not mean to require an Arizona licensee, in good standing, who has been actively practicing optometry in another state or in public service, to take an initial licensing examination in order to renew a license. However, we suggest you seek legislative clarification of A.R.S. § 32-1726.D regarding the establishment of standards under which examinations must be given.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC:clp



Linger
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Phoenix, Arizona 85007

Robert K. Corbin

February 5, 1981

INTERAGENCY
George Sanchez, O.D., Secretary
Arizona State Board of Optometry
Room 418
1645 West Jefferson
Phoenix, AZ 85007

Re: I81-033 (R80-206)

Dear Dr. Sanchez:

You have requested that this office render a "formal opinion on the interpretation" of A.R.S. § 32-1726.D, which reads as follows:

A person holding a license to practice the profession of optometry in this state who has not engaged in the practice of the profession of optometry in this state within a five year period may be required by the board to pass an initial licensing examination before his license is renewed.

The term "practice of the profession of optometry" is defined in A.R.S. § 32-1701.6. Presumably your inquiry concerns the meaning of the word "may" in the quoted statute.

The Arizona Supreme Court has held that "when the word 'may' is used in conferring power upon any officer, court, or tribunal, and the public or a third person has an interest in the exercise of the power, then the exercise of the power becomes imperative" Brooke v. Moore, 60 Ariz. 551, 554, 142 P.2d 211 (1943), quoting with approval McLeod v. Scott, 21 Ore 94, 26 P. 1061. In this regard, we note that the public has a vital interest in the competence of persons practicing optometry.

The "meaning [of the word 'may'] must always depend upon the legislative intent as determined by rules of statutory construction." Frye v. South Phoenix Volunteer Fire Co., 71 Ariz. 163, 167, 224 P.2d 651 (1950).

In determining whether the word "may" [in a statute] is permissive or mandatory, if it cannot be gathered from the language used therein, the court must look to the words, context, subject-matter, effects and consequences as well as to the spirit and purpose of the law. Id.

Thus, while the word "'may' standing alone and unrelated to its context, is usually permissive in meaning," Pioneer Mutual Benefit Association v. Corporation Commission of the State of Arizona, 59 Ariz. 112, 115, 123 P.2d 828 (1942), nevertheless a mandatory duty results "[w]here, from a consideration of the whole statute, and its nature and object, it appears that the intent of the legislature was to impose a positive duty rather than a discretionary power" Id., quoting with approval from 59 C.J.S. § 1082.

In enacting the statutes governing the practice of optometry in Arizona, the Legislature expressed its belief that such statutes are "essential . . . to safeguard the public health, safety and welfare," Laws 1980, Ch. 248, § 1, and declared it to be "a matter of public interest and concern that the practice of the profession of optometry merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of the profession of optometry in this state." Id. It appears conducive to these expressed purposes that a person who has not engaged in the practice of optometry in this State within a 5-year period be required to pass an examination before his license is renewed.

The statutes governing licensure of optometrists provide for an initial licensing examination, in which applicants are tested on "the subject matter currently being taught in universities or colleges of optometry." A.R.S. § 32-1724. A person who is licensed to practice optometry in another state, and who has been engaged in such practice for not less than 4 of the 5 years immediately preceding the application, may take a licensing examination consisting only of a practical and oral, but no written, examination. A.R.S. § 32-1723. Thus, in addition to the other qualifications for licensure by reciprocity, an applicant must have engaged in the practice of optometry for at least 4 of the 5 years immediately preceding his application. The Legislature's emphasis, in A.R.S. § 32-1723, on continued practical experience as a prerequisite for licensure by reciprocity further supports according a mandatory meaning to the word "may" in A.R.S. § 32-1726.D.

Dr. George Sanchez
February 5, 1981
Page 3

Because of the public interest involved, and the spirit and purpose of the laws governing the practice of optometry, we believe that the word "may" in A.R.S. § 32-1726 is mandatory, subject to the exceptions for licensure by reciprocity established in A.R.S. § 32-1723.

Sincerely,



BOB CORBIN
Attorney General

BC:ERE:lfc