

Opinion No. 7**Embalmers—Funeral Directors—License Renewal, Revocation,
Suspension, Fees**

Held: Embalmers and funeral directors board may not summarily refuse to renew license of embalmer for non-payment of license fees for four years past where proffer of payment of past and current dues is made, no formal action having been taken to suspend license.

March 4, 1957

Mr. G. L. Banks, Secretary
Embalmers and Funeral Directors Board of Montana
Choteau, Montana

Dear Mr. Banks:

In your letter of February 15, 1957, you requested my opinion as to whether your board can refuse to renew the license of a properly licensed embalmer who has failed to pay his license fee for four years past but who now proffers payment of past and present fees, no formal action having been taken to suspend the license.

In my opinion the license must be renewed if there is no other reason for suspension.

Your board rule 7 (b) provides that failure to comply with the "renewal rule" (presumably this rule means that all license renewal fees must be paid by July 30, rule 7 (a)) "causes automatic suspension and cancellation of the license and said license is only renewable through examination of all required subjects for such licenses, unless just cause can be shown for such delinquency."

The board does not have authority under the law to lay down such a rule (*Duncan v. A. R. Krull Co.* 114 P 2d 888, 57 Ariz. 472; *Cal. Empl. Conn v Butte Co. Rice Growers Assn.* 154 P (2d) 892, 25 Cal. 2d 624; *Eisenbug's White House v. State Board of Equalization* 164 P 2d 57, 72 Cal. App. 2d 8; *Montana Constitution, Sec. IV, 1*). True, the board is empowered under Section 82-702 to promulgate and enforce rules and regulations, but, according to the statute itself, these rules and regulations must be consistent with state law.

The state law (Section 82-708) spells out quite specifically the reasons for suspending or revoking a license. These appear to be exclusive reasons. They do not include non-payment of license fees. Being particular provisions they supercede the general provisions (93-401-16) (*State v. Certain Intoxicating Liquors* 71 M 79, 84; 227 P 472).

If, despite this, the board wishes to attempt suspending the license it must follow the hearing procedure outlined in the third paragraph of Section 82-708.

And if the Board, after such hearing, refuses to renew the license for failure to make timely payment of dues, the license holder is entitled, under the next paragraph of the same section, to appeal to a district court. Inasmuch as there is no statutory sanction for thus refusing to renew the license, it seems likely a district court might find such refusal arbitrary or abusive of discretion, in the words of the statute, and therefore reverse the board ruling.

Your attention is invited also to the following provisions, which indicate the lawmakers did not consider suspension of the license for failure to make timely payment:

Section 82-703 prescribes renewal fees but does not suggest a penalty for non-payment.

Section 82-706 specifically provides that license holders need not submit to examination before being entitled to renewal.

The misdemeanor provision of Section 82-706 seems to be the only means of enforcing the payment of license fees, and this would appear to be of doubtful practical efficacy.

Very truly yours,
FORREST H. ANDERSON
Attorney General