

**State Board of Examiners, for Nurses. Nurses, State Board of, Residence, of Party Applying for Examination. Rules, Authority of Board to Make. Fee for Examination, When not Returned.**

Law relating to State Board of Examiners for nurses considered and construed. No distinction is made between residence and non-residence, but the party to whom a certificate is issued must record the same in the county of his residence within the time required by law.

The board has authority to make rules respecting return to the applicant of the registration fee in case of failure of applicant to pass examination.

March 11, 1915.

Mrs. George N. Bennett,  
Helena, Montana.

Dear Madam:

I acknowledge your inquiry calling for a construction of Chapter 50, Laws of 1913, relating to examination of persons engaged in the profession of nursing the sick, the specific questions submitted being:

1. What difference, if any, is made by the terms of the Act between residence and non-residence in the State of Montana?
2. May a fee for registration be withdrawn in case applicant chooses not to take examination?

An examination of the Act, Chapter 50, Laws of 1913, discloses the fact that the question of residence is not named or referred to therein, except as applied to the members of the Board of Examiners, and also in Section 8 of the Act, where the person to whom a certificate is issued is required to have the same recorded in the county of his residence within thirty days after issuance. Residence is very largely a matter of intent.

Section 32, Revised Codes.

Temporary absence from the State for whatever length of time, will not alone divest one of residence previously acquired. As to some vocations, established residence within this state is necessary, either from the nature of the vocation or employment, or made so by statute. Proper care of the sick, however, requires knowledge of natural rather than statutory law or regulations. Residence does not necessarily add to that knowledge, and it is only by authority of statute that examinations can be limited to residence. Said Chapter 50 does not contain any such authority. Section 9 of this Act, which prescribes the qualifications of applicants for examination, is wholly silent as to residence. Hence, as to applicants for examination, the place of residence at the time of such application or examination, appear to be immaterial, but if a certificate is issued to the applicant under the meaning of Section 8 of the Act, residence must be established within some county within the state, and such certificate recorded therein

within thirty days after it has been issued.

2. Under the provisions of Section 9 a registration fee of Ten Dollars must be paid by the applicant, and although the law is silent as to whether this fee shall be paid prior or subsequent to examination, and as to whether it must be returned upon the demand of the applicant, yet I am of the opinion that in view of the provisions of Section 7, which confers authority upon the Board to adopt the necessary rules, that the rule of the Board providing that this fee shall be paid in advance, and will not be returned, is a reasonable rule and regulation, for otherwise the Board might be put to great expense out of mere idle curiosity on the part of the applicant, and the Board derives its entire income from the fees collected. Furthermore, this rule permits the applicant, who fails in his examination, to take another examination without payment of any additional fee.

Yours very truly,

D. M. KELLY,

Attorney General.