

Opinion No. 137**Barbers—Licenses—Penalties.**

HELD: That no penalties may be imposed upon duly licensed barbers who are delinquent in the payment of their annual license taxes other than those specifically provided for by law.

April 4, 1933.

You have requested further advice in connection with our Opinion No. 115, issued March 16, 1933.

Section 11 of Chapter 18, Laws of 1931, provides for an examination, to determine fitness, for which a fee of \$15.00 shall be charged. After the applicant has successfully passed the examination he is required to pay \$3.00 for issuing his certificate, and on or

before August 1st of each year a fee of \$3.00 to renew his certificate. No other fees are provided for by the act or laws of the state.

In case of violations of the act, the board may, **after hearing**, suspend or revoke the certificate of any barber who wilfully violates any provision of the act or persistently fails to conform to the lawful rules and regulations promulgated by the board. This means that one's certificate may be revoked only "after hearing." "After hearing" can mean nothing less than that any barber holding a certificate shall be formally charged with some violation of the act or legal rules or regulations of the board, that have been duly promulgated, and given an opportunity to defend himself, (State v. Schultz, 11 Mont. 469), and after hearing his right to follow his trade, may not be suspended nor his certificate of registration revoked unless he be found to have **wilfully** violated the act or persistently failed to conform to such rules and regulations. Unless the board, after hearing, revokes his certificate, no new examination may be required or the fee therefor demanded.

We suggest, however, that your board may properly require as a condition precedent to renewal, payment of any delinquent yearly renewal fee, for any preceding year during which the barber actually practised without having obtained his renewal. Where a license is required before one may engage in any particular trade, profession or business, as a rule no fee is charged for any period of time that he is not actually following his occupation.

Two methods are provided by the act to enforce its provisions: First, by suspension or revocation of certificate of registration by the board, and, second, by charging the offender with a misdemeanor by court action. Either one or both of these remedies may be applied, and both may be prosecuted at the same time.