

No. 242

**MONTANA STATE BOARD OF DENTAL EXAMINERS—
DENTAL EXAMINERS, MONTANA STATE BOARD OF—
DENTISTS**

Held: The Board cannot legally appropriate moneys from the treasury to the individual or groups of dentists, but such funds must be allowed to accumulate so they will accrue to the benefit and advantage of all dentists.

The only persons eligible to apply for certificates as registered dental assistants are those who were employed in the office of a regularly licensed dentist in the State of Montana for one or more years prior to February 23, 1935, and it is discretionary with the Board whether such persons shall be granted a certificate.

September 13, 1941.

Mr. Leonard A. Jenkin, Secretary
Montana State Board of Dental Examiners
401 Ford Building
Great Falls, Montana

Dear Doctor Jenkin:

You have heretofore written to this office as follows:

“The Montana State Board of Dental Examiners through this office respectfully requests your instructions and your interpretation of one or two points or clauses of the Montana Dentistry Regulation Act.

“It is not unusual for an individual dentist or a group of dentists to ask for sums of money from the treasury of the Board for purposes not always clear to the membership of the Board. The request may be for making a gift to some organization or institution, or it

may be for the purpose of disseminating dental health publicity to the general public through magazines, radio programs, etc. At the present time the Board has been asked to match a sum of five hundred dollars (\$500.00) set aside by the Montana State Dental Association for educational purposes. Since the funds of the Board are derived from an annual registration fee of four dollars (\$4.00) paid by all Montana dentists, as well as an examination fee of fifty dollars (\$50.00) paid by all applicants to obtain licenses, the question arises: Can we legally appropriate funds from the treasury to individuals or groups of dentists, such as the Montana Dental Association whose membership numerically is represented by approximately one-half of the Montana dental roster, or should the funds be allowed to accumulate so that they would accrue to the benefit and advantage of all Montana dentists as per Section 6 of the dental statutes?

"We would like to know if there is a statute of limitations governing the time girls and women may apply for licenses to practice dental hygiene, or are we required to issue licenses at any time some persons may remember they worked in a dental office prior to the passage of the present law passed and approved February 23, 1935? Does the privilege of becoming registered prevail indefinitely by furnishing satisfactory evidence or have we the authority to set a date?"

Section 3115.6, Revised Codes of Montana, 1935, provides in substance all dentists practicing in Montana shall pay a license fee of \$50.00 and in addition thereto shall pay annually the sum of \$4.00 as a license fee, provided, however, that the board shall have the right to reduce the annual license fee of \$4.00 to the sum of \$1.00 or more (but not in excess of \$4.00) per year when the amount of the balance of cash in the hands of the secretary-treasurer reaches the sum of \$4000.00, it being the intent of this act that said funds shall be maintained at an approximate level of \$4000.00.

Section 3115.23 in effect provides any dental assistant who can produce satisfactory evidence such person has been employed as a dental hygienist in the office of a regularly licensed dentist in the state of Montana for one or more years prior to the passage of the act may, upon the payment of the fee of \$10.00, be granted a certificate to practice by the state dental board.

The board has only such power as is given it by statute. It must point to some statutory provision for its authority to act. "The power to act without authority does not exist." (See *State ex rel. Bean v. Lyons*, 37 Mont. 354, 364, 96 Pac. 922.) The only authority of the board of dental examiners with reference to the use of its funds is found in Section 3115.9, Revised Codes of Montana, 1935, wherein, after providing for the payment of per diem and expenses of board members in attending meetings of the board, it is provided:

"All moneys received from any source in excess of expenses and salaries above provided for, shall be held by the secretary-treasurer of said board as a special fund for meeting the expenses of said board, the proper administration of this act and for such educational purposes as may be deemed wise by said board. All moneys on hand shall be invested or deposited under direction of the board, and all moneys received by the board under this act shall be and remain subject to its exclusive custody and control."

Therefore, the only use of funds authorized by statute is the payment of expenses and per diem of board members for educational purposes and for the administration of the act. All other money must be deposited or invested. There is no authority for the use of money in donations.

It is therefore my opinion, in view of the language employed in the foregoing Section 3115.6, the Montana State Board of Dental Examiners cannot legally appropriate funds from the treasury of said board to

individuals or groups of dentists, but the funds must be allowed to accumulate until they approximate \$4000.00; and then it is mandatory upon the board to reduce the annual license fees to an amount not less than \$1.00 per year.

It is my further opinion, in view of the provisions of Section 3115.23, the privilege of becoming a registered dental assistant is not a privilege of which everyone can avail himself. The only persons privileged to apply for registration as dental assistants are those who were regularly employed as dental hygienists in the offices of regularly licensed dentists in the state of Montana for one or more years prior to the passage of the act, which became a law on February 23, 1935. This applies to any date prior to February 23, 1935, and the board has no authority to regulate otherwise. It is also my opinion those who are qualified to apply need not necessarily be admitted by the board because the statute uses the word "may." This indicates the board has discretionary powers in the matter.

Sincerely yours,

JOHN W. BONNER
Attorney General