

No. 500

**BARBERS—STATE BOARD OF BARBER EXAMINERS—  
FUNDS—EXPENDITURES IN EXCESS OF INCOME—  
MILITARY SERVICE**

- Held: 1. It would be illegal and unlawful for the Board of Barber Examiners to pay any debts contracted by a former board in any one year in excess of the income for such year.
2. The board is without authority to provide, by resolution or otherwise, that registered barbers entering and serving in the military forces during the present war be exempted or relieved from the direct provisions of Section 3228.29, Revised Codes of Montana, 1935, as amended by Section 4 (e) of Chapter 183, Laws of 1937, relative to fees for the renewal of certificate of registration.

October 13, 1942.

Mr. Guy Brazelton, Secretary  
Board of Barber Examiners  
401 North Main Street  
Helena, Montana

Dear Mr. Brazelton:

You advise that former members of your board overspent the funds in the treasury for expenses incurred by said members during the year 1941, and now make claim for payment. You further advise the annual report for that year did not show a deficit, but, on the contrary, it showed a cash balance of \$143.01. You also advise the former Board passed a resolution exempting all licensed barbers who enter the armed forces from the payment of annual license fees for the duration of the war, and permitting their reinstatement upon their return from military service, upon the payment of \$3.00. You have asked my opinion on these matters.

The State Board of Barber Examiners is a statutory board created by legislative act. The board is composed of three members appointed by the governor to serve for definite terms, and may be removed by the governor for cause. (Section 3228.24, Revised Codes of Montana, 1935.) Section 3228.26 provides each member shall receive a compensation of ten dollars per day while attending board meetings, together with legitimate and necessary expenses incurred in attending the meetings of said board, and the board shall be self-sustaining and no funds of the state shall be paid for the operation and maintenance of the board. It requires the boards to make an annual report of its proceedings and moneys expended by it to the governor.

Section 1 of Chapter 40, Laws of 1937, provides in part:

"It shall be unlawful for . . . any officer, department, board, commission or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation, or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the income provided for such year . . . and it shall be and is hereby made

**the duty of any and all of such . . . officers, departments, boards, commissions and bureaus to keep such expenditures, obligations and liabilities within the amount of such income.”** (Emphasis Mine.)

Section 2 of this act provides that, in case of an emergency, upon application to the State Board of Examiners showing the facts constituting such emergency, the Board of Examiners may permit the expenditure in excess of income for any one year.

Section 4 of the act provides:

“Any authority or member of a board of trustees or any person, officer or employee violating the provisions of Section 1 or Section 2 of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment; and in addition thereto, said authority, member, person, officer or employee, shall be personally liable, and the surety or sureties on his bond shall also be liable, to the State of Montana for the amount of the excess thus unlawfully expended, and said authority, member, person or officer shall be guilty of misfeasance in office, and such employee shall be guilty of wrong doing and each shall be subject to removal from office or from such employment, upon complaint of any taxpayer, filed in a district court of this state, and upon proof of violation of this act in accordance with law.”

It will be seen, therefore, under this act it is unlawful for any board or any member thereof, having charge of the expenditure of the income of such board, to expend in any one year an amount in excess of the income provided for such board for such year. I believe the Board of Barber Examiners is such a board as comes within the provisions of the act.

It is clearly contemplated, under the provisions of Section 3228.26, Revised Codes of Montana, 1935, the board shall be self-sustaining in operating and maintaining said board from the income derived from the fees it is authorized to collect. It is also clear it is contemplated the board should live within its income each year. This appears from the fact the board is required to make an annual report to the governor of its “proceedings and money expended” each year.

Therefore, any debts or obligations incurred by the board in any one year in excess of the income for that year, unless authorized by the Board of Examiners, would be unlawful and illegal. It follows therefore such debts and obligations could not lawfully be paid.

With reference to your question relative to the resolution passed by the board, I beg to advise that—under Section 3228.27, Revised Codes of Montana, 1935,—it is provided:

“ . . . The board shall have authority to make necessary rules and regulations for the administration of the provisions of this act **not inconsistent with this act nor the laws of the state.”** (Emphasis Mine.)

Section 3228.29, Revised Codes of Montana, 1935, as amended by Section 4 (e) of Chapter 183, Laws of 1937, provides each registered barber shall—on or before the first day of July of each year—pay a license fee of three dollars for the renewal of his certificate of registration, and if he fails to have such certificate renewed on or before the first day of August of such year, he shall, upon renewal, pay a penalty, or a restoration fee, of five dollars in addition to the regular fee of three dollars. It further provides, that, if the certificate of registration is not renewed within one year after date of expiration thereof, such barber shall not be entitled to have such certificate of registration renewed or a new certificate of registration issued, without first applying for and taking the examination and paying the fees required.

The above mentioned provisions are clear and explicit. The resolution of the former board would be clearly inconsistent with these provisions and hence not within the authority of the board to make.

It is therefore my opinion:

1. It would be illegal and unlawful for the Board of Barber Examiners to pay any debts contracted by a former board in any one year in excess of the income for such year.

2. The board is without authority to provide, by resolution or otherwise, that registered barbers entering and serving in the military forces during the present war be exempt or relieved from the direct provisions of Section 3228.29, Revised Codes of Montana, 1935, as amended by Section 4 (e) of Chapter 183, Laws of 1937, relative to fees for the renewal of certificate of registration.

Sincerely yours,

R. V. BOTTOMLY  
Attorney General