

MAINE STATE LEGISLATURE

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June 11, 1942

Dr. Albert E. Chittenden, Secretary
Board of Osteopathic Examination
50 Goff Street
Auburn, Maine

Dear Sir:

Re: Harlan Bartholomew, formerly of Unity, Maine

I have your letter of May 28th enclosing reports of the Clerk of Courts from Waldo County, said reports bearing dates of January 20, 1942 and May 14, 1942.

R. S. Chapter 21, Section 68, reads in part as follows: "Said board, after a conviction before the proper court for crime in the course of professional business, of any person to whom a certificate has been issued by them and after hearing, may, by a vote of four-fifths of the entire board, revoke the certificate and cancel the registration of the person to whom the same was issued."

The word "conviction" has been defined in the New Jersey case of Tucker v. Tucker, 137 Atlantic 405, to mean a confession of accused in open court or a verdict which ascertains and publishes the fact of guilt. The courts in general have held that the word "conviction" does not necessarily include sentence. Although there have been cases where the courts have said that the word included final judgment, the weight of authority is certainly to the contrary. Maine has consistently held that conviction does not include sentence. See Nason vs. Staples, 48 Me. 127.

It is my opinion, therefore, that the plea of guilty constitutes a "conviction", within the meaning of the statute, and is sufficient to give your board ample reason for revoking the certificate of this man Bartholomew by a four-fifths vote of the entire board. Such revocation must come after a hearing, and, of course, he is entitled to notice.

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The question whether you are prevented under the Soldier's And Sailors' Civil Relief Act of 1940 from proceeding against this man depends on whether or not your board comes within the definition of a "court" that appears in the Federal Statute. This definition is as follows: "The term 'court' as used in this act, shall include any court of competent jurisdiction of the United States, or of any state, whether or not a court of record."

R. S. Chapter 21, Sections 60 to 71 inclusive, and especially Section 68, indicate clearly that the Board of Osteopathy is not a "court". Said section gives you authority to investigate and bring the facts to the notice of the proper prosecuting officer. The board, after a conviction before the "proper court", may revoke the certificate and cancel the registration. It may revoke a certificate wrongly obtained. It reports to the governor annually.

Your board has somewhat the functions of the "board of special inquiry" which is described in Bouvier as an "instrument of executive power, not a court". See Pearson v. Williams, 202 U. S. 281. It is somewhat similar in its functions to a public service commission which, in the case of Central Vermont Railway Company vs. Redmond, 189 Fed. 683, has been declared to be not a "court", at pages 684 and 685. It also, in some degree, resembles the Mississippi Railroad Commission v. Illinois Central Railway Company, 203 U. S. 235, is held not to be a "court".

The functions of your board are entirely executive and ministerial. Even when you sit and pass upon evidence, you, as a board, have no authority to perform any of the functions of a court. The board simply turns over its findings to the proper prosecuting officer, or in case of a conviction in a "proper court", decides whether it will or will not revoke the license of the convicted person, or in case a license has been obtained wrongfully or through fraud, it decides whether it will or will not suspend the license. In these acts, there is nothing judicial. You do not in any way interpret the laws and apply them to any case before you. You simply act or decline to act on matters of fact which you have ascertained through investigation, or which have been brought before you. Under the circumstances, your board is not a "court" and, therefore, is not covered by the Federal Soldiers' and Sailors' Civil Relief Act.

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When you arrive at the above conclusions, it necessarily follows that neither continuance of the case for sentence, nor service in the armed forces of the United States, need interfere with the act of the board in revoking his license.

I am returning to you, herewith, the two letters from the Clerk of Courts of Waldo County.

Very truly yours,

Frank I. Cowan
Attorney General

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