

# MAINE STATE LEGISLATURE

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November 27, 1974

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Secretary  
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Board of Optometry  
Attorney General

**Military Optometrists and Nonactive Licenses**

The contents of your letter of September 11, 1974, and enclosed correspondence, reveal the following factual situation: A resident of Maine is currently a career military officer practicing optometry in the United States Army. The military officer actively practiced optometry in the State of Maine for 5 years prior to entering the Army. Pursuant to the terms of (P.L. 1973, c. 474) entitled "An Act to Revise the Laws Relating to the Practice of Optometry," the Legislature has recently provided for the annual renewal of licensure on an inactive as well as active basis.

There is no statute, or rule or regulation promulgated by the Board of Optometry which defines the status of resident military optometrists.

Your inquiry relating to the classification of military optometrists who are residents of Maine, illustrates the clear need for the enactment of legislation defining their status as licensees.

The applicable language of P.L. 1973, c. 474 (32 M.R.S.A. § 2423(1) and (2) reads as follows:

"1. Annual renewal. Every registered optometrist practicing in the State shall annually, before the first day of April, pay to the board a license renewal fee not in excess of \$100 as established by the board under section 2567, for each office location.

"2. Nonactive license. Every registered optometrist not practicing within the State shall, upon payment of an annual license renewal fee not in excess of \$100, as established by the board, be issued a nonactive license renewal certificate. Said fee shall be payable to the board before the first day of April each year. Should a holder of such a nonactive license renewal certificate desire to practice within the State, he shall so notify the board in writing, including a statement of his proposed office location, and except as hereinafter provided, he shall forthwith be issued an active license certificate by the board."


In order to "pass muster" as to constitutional requirements of due process, licensing laws must be specific, rational and fair. If reasonable men have to guess as to their application, such laws are invalid and unenforceable as an improper use of the police power.

There is no question that Section 2423(2) quoted above is fair and impartial in content when applied to the resident optometrist who is a retiree and seeks inactive status. Inactive registration statutes, whether the requirement of a fee is involved or not, have been upheld as a valid exercise of the police power. See Abelson's, Inc. v. New Jersey State Bd. of Optometry, 3 N.J. Super. 332, 65 A.2d 644 (1949).

A careful look at the legislative history of the enactment of P.L. 1973, c. 474 reveals no indication that the Legislature gave any consideration to the inclusion or omission of military optometrists from the provisions of our license law. Military optometrists remain in "no man's land," license-wise! Were it simply a matter of nomenclature, and the military optometrist, whether categorized as active or inactive, could be restored to active practice within the State upon payment of a \$25.00 annual renewal fee, then no authentic hardship would exist. Such is not the case, however! Subsection (3) of Section 2423, Title 32, provides that a nonactive licensee for a period in excess of 3 years must submit to a practical examination and successfully pass same, as a condition precedent to restoration to active status. Such appears to be a valid regulation applicable to licensees who are, in fact, inactive. The applicability of such a provision to military optometrists engaged in active practice seems remote.

Lastly, looking at our Optometry Law in toto, it should be pointed out that section 2426 provides, in essence, that annual courses in subjects related to optometry are required by the Board for all licensees, inactive as well as active. Failure to take prescribed courses means nonrenewal of licensure, unless a waiver is obtained from the Board. Section 2426 is further evidence that the Legislature did not consider the status of resident military optometrists, when it set forth license requirements. Unless a military optometrist is fortuitously located at a military establishment within the State of Maine, he is likely to be foreclosed from being able to take courses established by the Board, and thus subject to lose his license. To be certain, the Board could grant a waiver of said requirement for a period of 20 years or the duration of the military optometrist's career, whichever is shorter in period of time, but this procedure would seem to defeat the logical purpose of the existing licensing law.

In summary, prior to the enactment of legislative standards to govern the licensure of military optometrists, I would suggest that the Board continue to issue inactive licenses to resident military optometrists with the proviso that said optometrists be granted a waiver from the annual educational courses required by 32 M.R.S.A. § 2426, and further, that said optometrists be exempted from the requirement of submitting to a practical examination upon seeking resoration to active status as set forth in 32 M.R.S.A. § 2423(3).

  
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