

Opinion No. 53-5639

January 16, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Marvin Doughty Executive Secretary State Board of Embalmers and Funeral Directors Tucumcari, New Mexico

{*24} This is in answer to your letter dated January 6, 1953, requesting an opinion of this office as to whether a man who was formerly a licensed embalmer, and dropped his license in 1946, and who now desires a license, can be issued such a license without taking an examination.

Section 24 of Chapter 71, Laws of 1947 sets up provisions for the annual renewal of embalmers and funeral directors' licenses and subsection (b) thereunder provides that if the annual renewal fee and delinquent penalty are not paid within 30 days after said date the certificate shall lapse. Sub-section (c) requires that any funeral director or embalmer who allowed their licenses to lapse shall be required when applying for renewal to meet all the requirements imposed upon applicants not previously qualified by the Board.

Section 17 and 18 of the Act sets forth an examination as one of the requirements. This clearly leaves no discretion within the Board to waive this requirement, except in the following situation:

Under Section 34 of the Act there is an exception to the requirement stated above. Section 34 is the "Grandfather's" clause of the Act which accords certain privileges to persons who were licensed prior to the passage of the Act of 1947. Under sub-section (a) of that section if the party held a license valid in all respects at the time of the passage of the Act in 1947, he shall be issued a license by the Board without examination. Under sub-section (b) of Section 34 any person who at the date of the passage of the Act has been a resident of this state for more than ten years and who has for a period of more than five years previous to the passage of this Act been engaged in business as a funeral director or embalmer or both, is entitled to a license without an examination. This would also indicate that since Section 34 (b) of the Act does not include the descriptive words "continuously" or "immediately", any five year computation of time prior to March 12, 1947 is sufficient to qualify applicant under this Section.

In summation, it is the opinion of this office that an embalmer who was licensed prior to the enactment of the laws of 1947, Chapter 71, Section 1 through 34 is entitled to be issued a license without an examination, if he qualifies under requirements set out under Section 34 (a) or 34 (b), or both, of the Act of 1947.

By: William J. Torrington

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