

Opinion No. 55-6160

May 12, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Dr. John W. Thomas, President, Board of Examiners in Optometry, 3108 Central Ave., S.E., Albuquerque, New Mexico

On April 26, you inquired of this office whether or not a person, who had 2000 clock hours in education in the field of optometry at a time when the New Mexico law required only 2000 clock hours, would be eligible to take the examination in view of the change in 1939 in the New Mexico law requiring 4000 clock hours.

The pertinent statute is § 67-7-6 (e), N.M.S.A., 1953, which reads as follows:

"Qualifications for certificate of registration. -- A person shall be deemed qualified to receive a certificate of registration as an optometrist:

. . . .

(e) Who has graduated from a school or college of optometry approved and accredited by the New Mexico state board of optometry which has a minimum requirement of four thousand (4,000) clock hours, and distributed over four (4) school years of eight (8) months each and embracing the following subjects: General anatomy, general physiology, general mathematics, general physics, general optics, ocular anatomy, ocular pathology, ocular myology, and neurology, theoretical optics, practical optics, theoretical optometry, practical optometry, optical mathematics, hygiene, psychology, and optical laboratory and clinical work, and such additional studies and subjects as the state board of optometry may prescribe; Provided, however, that such additional studies and subjects shall be within the curricula as taught by recognized Class A optometrical colleges.

. . . ."

There is in this law a so-called "grandfather" clause, which is § 67-7-3, which provides that any person who has a certificate of registration "in force and in good standing at the time of passage of this act shall be and remain in full force and effect, subject to all the terms and provisions of this act after its passage."

This provision clearly means that the optometrist must have had a license at the time of the passage of the Act and if he did not have a license at that time he must be qualified under the provisions of the Act at the time he applies for registration or for examination. The prior law carried no vested right to retain a certificate and the retention of a certificate must be based on its issuance prior to the passage of the Act. If the applicant

was not licensed in New Mexico at the time the present Act was passed (1939), he must qualify according to the strict interpretation of the law and have 4000 hours.

Of course, if this man is eligible for reciprocity under § 67-7-10, the mere fact that he would not have the educational qualifications would not bar him from admission under reciprocity if he is a licensed optometrist as defined in that section.

Therefore, it is the opinion of this office that the applicant for examination must have 4000 clock hours of instruction before he can become eligible to take the examination.

I sincerely hope that this answers your inquiry.

By Fred M. Standley

Assistant Attorney General