

1976 S.C. Op. Atty. Gen. 206 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4371, 1976 WL 22990

Office of the Attorney General

State of South Carolina

Opinion No. 4371

JUNE 17, 1976

**\*1** An applicant for the Optician's exam who is examined by the Board by mistake and who does not pass the exam is not entitled to retake the examination if he does not meet the qualifications.

An applicant for the Optician's exam who has completed only two (2) years apprenticeship in a qualified optical laboratory is not entitled to take the examination.

TO: Jack S. Folline

South Carolina Board of Examiners in Optometry and Opticianry

QUESTIONS PRESENTED:

Applicant A: Applied for and was examined by the Board last year. His grades did not meet the legal definition for passage to become licensed. He reapplied this year and it has come to the Board's attention that we incorrectly examined the applicant. He is not qualified under Section 56–1064, paragraph 3, in that he had not apprenticed in an optical laboratory which had been established not less than five years and approved by the Board. Under the law is this applicant qualified to retake the examination?

Applicant B: Completed approximately two years in an optical laboratory which to our knowledge meets qualifications. He, however, transferred his apprenticeship to another laboratory where the optician had not been licensed for five years and the laboratory had not been established for five years. Is this applicant qualified to take the state board?

AUTHORITIES:

Section 56–1064, 56–1065, 56–1066, Code of Laws of South Carolina, 1962, as amended.

[Stone and Clamp, General Contractors v. Holmes](#), 217 S.C. 203, 60 S.E.2d 281 (1950); [McClohon v. Harlan](#), 254 S.C. 207, 174 S.E.2d 753 (1970); [Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376 (1970); [Hatchett v. Nationwide Mutual Ins. Co.](#), 244 S.C. 425, 137 S.E.2d 608 (1964); [Squires v. S. C. Law Enforcement Division](#), 248 S.C. 609, 155 S.E.2d 859 (1967); [State Ex Rel McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E.2d 778 (1964); [Southern Railway Company v. South Carolina State Highway Department](#), 237 S.E. 75, 115 S.E.2d 685 (1960); [Bell v. South Carolina State Highway Department](#), 204 S.C. 462, 30 S.E.2d 65 (1944); [Rabon v. South Carolina State Highway Department](#), 258 S.C. 154, 187 S.E.2d 652 (1972).

DISCUSSION:

Sections 56–1064, 1065, and 1066 of the Code of Laws of South Carolina, 1962, as amended, relate to the qualifications and registry of opticians. Section 56–1064 of the Code sets forth the requisites of qualification for registry as an optician. Upon a general reading of Section 56–1064, it appears that the language and organization of the statute do not set forth any particular chronological order in which the satisfaction of the requirements therein must occur; that is, the first three requirements of Section 56–1064 do not appear to be prerequisites of the taking of the examination, the fourth requirement. However, it is a fundamental rule in the construction of a statute that the intent of the legislature must

prevail. [McClohon v. Harlan](#), 254 S.C. 207, 174 S.E.2d 753 (1970); [Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376 (1970); [Hatchet v. Nationwide Mutual Insurance Company](#), 244 S.C. 425, 137 S.E.2d 608 (1964); [Squires v. South Carolina Law Enforcement Division](#), 249 S.C. 609, 155 S.E.2d 859 (1967). And statutes covering the same subject matter must be read and construed together, and reconciled, if possible. [Southern Railway Company v. South Carolina State Highway Department](#), 237 S.C. 75, 115 S.E.2d 685 (1960); [Bell v. South Carolina State Highway Department](#), 204 S.C. 462, 30 S.E.2d 65 (1944). Section 56–1066 provides that upon the completion of certain ministerial recording functions, all persons who successfully complete the required examination will thereafter be registered as opticians. The registration is automatic upon completion of the exam. Without question, the intent of the legislation herein is to protect the health, welfare, and safety of the public and in order to insure that such is accomplished, the statutory requirements set forth in Section 56–1064 must be satisfied before licensure. To interpret Section 56–1064, as allowing the applicant to take the examination prior to the completion of the other three requirements therein could result in the applicant being licensed before compliance with the requirements is completed. This would be an absurd conclusion in contravention of the legislative intent therein. An interpretation of a statute that reaches an absurd result and does not depict legislative intent is not permitted.

\*2 However plain the ordinary meaning of words used in a statute may be, courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended, or would defeat plain legislative intention, and if possible courts will construe a statute so as to escape absurdity and carry the intention into effect. [State Ex Rel. McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E.2d 778 (1964).

Section 56–1066 provides that the completion of the examination is the final required step in the certification process and therefore, all other requirements for certification must be satisfactorily completed prior to the applicant's taking the examination. It reasonably concludes that Section 56–1064 and 1066 when read together, as they must be, and given the effect that the legislature intended mandate that the requirements of Section 56–1064 (1)(2)(3) be satisfied before the applicant is permitted to take the examination.

In light of the above discussion, it appears that ‘Applicant A’ fails to qualify for the examination in that he has not satisfied the requirements of Section 56–1064(3). The fact that the applicant has taken the examination before has no effect on his present status. The applicant's right to take the examination is based upon compliance with the prescribed qualifications.

It appears that ‘Applicant B’ has not complied with the requirement of Section 56–1064(3) and therefore, is also ineligible to take the examination at the present time. The applicable portion of said section reads as follows:

[o]r has had four years apprenticeship in an optical laboratory which has been established not less than five years and approved by the Board; (emphasis added)

‘Applicant B’, according to the factual situation at hand, has not apprenticed for four (4) years in an optical laboratory that has been established for a least five years. He has apprenticed for only two (2) years in a laboratory that meets the standards of Section 56–1064(3). ‘Applicant B’ is not entitled to take the examination until he has complied with all the prescribed requirements.

#### CONCLUSION:

It is the opinion of this office that neither of the applicants is eligible to take the exam at this time due to failure to comply with the requirements of Section 56–1064(3) of the Code of Laws of South Carolina, 1962, as amended.

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