

OPINION
49-53

January 11, 1949 (OPINION)

ELECTIONS

RE: State Board of

This is in reply to your letter of January 6, 1949, requesting the attorney general's opinion on the following matters:

1. An opinion interpreting the provisions of chapter 43-09 and particularly sections 43-0909 and 43-0912 of the 1943 Revised Code.
2. An opinion defining the rights, duties, and powers of the state board of electricians with respect to disposition of applications for licenses from companies, partnerships, and corporations, as well as individuals.
3. An opinion setting forth the procedure in issuing licenses.
4. An opinion stating whether or not the board of electricians has any discretion in the granting or refusal of licenses to companies, partnerships, or corporations.

In answer to Matter No. 1, section 43-0909 of the 1943 Revised Code provides that every person undertaking to do electrical work as provided by this statute must apply for a license. It is immaterial whether the applicant is an individual or a corporation. Both must have the same consideration. If it is a corporation which applies for a license, the manager thereof shall make the application and take the oath and submit evidence as to experience. In 53 C.J.S., sec. 33, it states that in accordance with the provisions of some statutes or ordinances, a firm or corporation may engage in the plumbing business (or an electrician's business) on the examination and licensing of one member thereof who directs and supervises the plumbing work (or electrician's work). Therefore, the person in the corporation who personally manages and supervises the work must apply for the license, pass the required examination, and submit evidence as to his experience as required by statute. It might also be noted that by reason of the fact that a corporation is licensed to do electrician's work does not mean that it can employ a nonlicensed electrician to do the work of a licensed electrician, whether he is practicing the work personally or as an agent of a licensed corporation, company, or partnership.

Section 43-0909 of the 1943 Revised Code, further provides that: "The board shall examine the applicant and if, upon a technical and practical examination, he is found to possess the required knowledge and skill * * *." Here it is well to define what is meant by "technical." Defined in Black's Law Dictionary, "technical" means belonging or peculiar to an art or profession; while practical is used in the statute in the sense that it would reveal any qualification or characteristic which would be helpful generally in the occupation of an electrician.

Under section 43-0905 of the 1943 Revised Code, the board is empowered to make reasonable rules and regulations. Therefore, the board may devise a set of examination questions and a practical examination to be given to the applicants at a place and time designated by the board.

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53 C.J.S. section 34 states: "The board to which the conduct of the examination is delegated must act in accordance with the statute; and the rules and regulations which the board adopts and the questions which it selects must be reasonable. The method of determining the grade in the examination may be discretionary with the examining board."

The above-quoted section explains who determines whether the applicant has the required skill and knowledge as provided by statute.

In section 43-0912 of the 1943 Revised Code, there is a provision to the effect that the applicant "shall take an oath and submit written evidence that he has had the required experience. * * *" The oath provided for in this section is the oath of the applicant stating that he has the required experience as prescribed by section 43-0911. This section may also be interpreted to mean, where it says "written evidence," affidavits from persons under whom the applicant received the required experience. This written evidence is in addition to the examination required in the above section (43-0909).

In answer to Matter No. 2, the board has certain rights, duties and powers.

In 53 C.J.S. section 37, under the title "Licenses," the designated board or officer has no powers or duties other than those which have been created by the statute or ordinance, and the powers and duties of such a board or officer, as far as they require the exercise of judgment and discretion, and are not mere ministerial acts, cannot be delegated to agents. Therefore, the passing on the applicant must be done only by members of the board.

As to the question of the right to make rules, we find in 53 C.J.S. section 37 b. the following:

As a general rule the board or officer vested with the power to grant or to refuse licenses may prescribe reasonable qualifications or adopt reasonable rules or regulations for the issuance of licenses. The qualifications or regulations must be reasonable, and they must not be in contravention of, or beyond the authorization of, the statute or ordinance.* * *

In answer to Matter No. 3, the procedure of disposing of an application for license is as follows: After the board has been

notified of the applicant's desire to procure a license, the board should send the applicant a formal application, notify him of the required affidavits and their contents, the fees for application, and the date, place and time of the technical and practical examination. The board may thereafter pass on the applicant by the laws hereinbefore described.

In answer to Matter No. 4, 53 C.J.S. section 38 states: "As a general rule the power vested in the board or officer to grant licenses on compliance by applicant with the prescribed conditions carries with it, either expressly or impliedly, the power to exercise a reasonable discretion in granting or refusing license, * * *."

Page 2 of this section states: "Licensing board or officers must not exercise the discretion vested in them arbitrarily or capriciously, and they must act in accordance with what they believe to be in the interest of the public safety or public welfare.* * *"

In the matter of issuing a license to Boyer Electric, Inc., this office suggests that you follow the procedure and method herein described.

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Attorney General