

Cite as 412 S.W.2d 307

volved a Colorado statute which assigned nine specific "acts and conduct as may justify the revocation of a license". The Court held: "[q]uite clearly the causes designated in the statute are exclusive, and the maxim, 'expressio unius est exclusio alterius,' applies. * * *"

The Board contends and this Court seems to approve the contention that the rule under attack does not add new offenses to those listed in Article 4563. Both the Board and the Court rely heavily upon our holding in *Kee v. Baber*, 157 Tex. 387, 303 S.W.2d 376 (Sup.Ct.1957). In considering and approving the *Kee* case, I was of the opinion and still maintain that the rules considered in *Kee* were specifically tied to and closely related to specific sections of Article 4563. The rules there involved were designed to implement rather than to add a new and independent rule. Our decision in *Kee* stressed the idea and, in fact, the Court found that the board rule-making powers (emphasized by the Court in the present case) were intended "to vest the Optometry Board with authority to fill in the details relating to the proscribed actions." [emphasis added]. My analysis of *Kee* leads to the conclusion that this Court was not holding in *Kee* that the Board could do the proscribing itself. In our case, the Board makes no contention that the rule under attack in any manner is enacted to fill in the details or in implementation of a prospective enactment. The Board is seeking, at the hands of this Court, power to make the proscriptions in the first instance and for such rules to have the force of law just as though the Legislature had included them in the statute. I respectfully maintain that an administrative agency may not enlarge the causes for which a license may be revoked or suspended. See *Cherry v. Board of Regents of the University of State of New York*, 289 N.Y. 148, 44 N.E. 2d 405 (1942). In *Cherry*, the Court held that since the New York Legislature has enumerated the reasons for suspension or revocation of licenses, the Board cannot, by adoption of rules, add to the statutorily

enumerated grounds. The Court said in *Cherry*:

"[W]e have said that the Board of Regents' 'specific supervisory powers over the practice of dentistry * * * enable it, within reasonable limits, to prescribe canons by which conduct deemed by it, in the exercise of fair judgment, to be unprofessional and objectionable may, in the interest of rescuing that profession from vulgar commercialism, be banned.' Matter of Dr. Bloom Dentist, Inc., v. Cruise, 259 N.Y. 358, 363, 182 N.E. 16, 17. The field in which that power may be exercised is nonetheless subject to restriction by the Legislature, and even within the field in which the Legislature has delegated to the Board of Regents power to prescribe canons banning conduct which it deems unprofessional and objectionable, the Board of Regents cannot by the exercise of that power enlarge the causes for which the license of a dentist may be revoked or suspended, as defined in subdivision 2 of section 1311.

" * * *

"[T]he bill which had been introduced in the Legislature defining the grounds for the revocation of a dentist's license included as an additional ground 'that the dentist has violated the rules of the regents governing advertising or any other rules.' That ground was stricken out before the bill was passed.

" * * *

"[T]he Legislature has, itself, specified the grounds upon which a license to practice dentistry may be suspended or revoked. The Legislature has not delegated to the Board of Regents power to create offenses which shall furnish additional grounds."

Here again, I wish to emphasize that the Court in the present case has misconstrued its holding in *Kee v. Baber*, supra. We simply held in that case that the Board may enact such rules and regulations as would be consistent with the power given it under the provisions of Article 4556.