

Subject

Copy to

*State Board
Cosmetology*



STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

November 6, 1974

Opinion No. 74- 353

Mr. Henri Fournier
Executive Director
State Board of Cosmetology
630 Kansas Avenue
Topeka, Kansas 66603

Dear Mr. Fournier:

You inquire concerning the licensure of beauty shops within hospitals, nursing homes and rest homes.

K.S.A. 39-938 states thus:

"Adult care homes shall comply with all the lawfully established requirements and rules and regulations of the state board of health and the state fire marshal, and any other agency of government so far as pertinent and applicable to adult care homes, their buildings, operators, staffs, facilities, maintenance, operation, conduct, and the care and treatment of residents: *Provided, That the administrative rules and regulations of the state board of cosmetology shall not apply to adult care homes.*" [Emphasis supplied.]

You advise that at the present time, the State Board of Cosmetology has licensed many beauty shops within nursing homes and care homes. In the past, privileges were granted for a licensed beauty shop in such places to serve patients and residents, staff and visitors. If a care home requested a beauty shop license, and complied with the rules and regulations pertaining to beauty shops, a license was issued and the shop inspected regularly. Since the issuance of Opinion no. 70-65-2 by Attorney General Kent Frizzel, in 1970, you advise that the Board has permitted a licensed cosmetologist to go to any hospital, nursing home or rest home, and to provide hair care services to patients and residents only.

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The opinion of Attorney General Frizzel to which you refer expressly sets out only three conclusions: first, that because K.S.A. 65-1904(a) permits a licensed beauty shop to be conducted on "premises" only, a mobile home or similar portable unit could not be licensed as a beauty shop; secondly, that cosmetology laws relating generally to "beautifying processes on persons" have no application to services performed on dead bodies at mortuaries, and therefore, cosmetologists may legally perform services on decedents at mortuaries; thirdly, that licensed nurses may perform the services of a cosmetologist in hospitals.

For some inscrutable reason, this opinion was thought to inhibit licensure of beauty shops on the premises of hospitals and nursing homes. The opinion does not deal, even tangentially, with this subject, and the inferences drawn therefrom are totally unsupported by its express conclusion.

Nonetheless, the Legislature responded to this apparently contrived controversy in 1972 by adding the underscored proviso to K.S.A. 39-738, supra. Licensure of beauty shops is governed by K.S.A. 65-1904a, which provides in pertinent part thus:

"Any licensed cosmetologist or person desiring to establish a beauty shop shall make application, on a form provided, to the state board of cosmetology, accompanied by a shop license fee of fifteen dollars (\$15). Upon the filing of such application, the board shall inspect the equipment as to safety and sanitary condition of the premises and if said equipment and sanitary condition of the premises are found to comply with the sanitary regulations of the state board of health and the regulations of the state board of cosmetology, the board shall issue a certificate of registration...."

Under this statute, the Board remains empowered to license beauty shops, wherever located. Under K.S.A. 39-738, only its administrative rules and regulations are inapplicable to adult care homes, and presumably, to all facilities located on premises which are licensed as part of an adult care home. Thus, the Board is placed in the dilemma of being required to license beauty shops, even those located in adult care homes, but unable to enforce its own rules and regulations in such licensed shops. The Board remains obliged, of course, to

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inspect the equipment as to safety, and the sanitary condition of the premises, to determine if they comply with sanitary regulations of the State Board of Health, and its successor, the Department of Health and Environment. The Board is, by virtue of K.S.A. 39-738, however, unable to enforce its own administrative rules and regulations on such licensed shops, when located in or on the licensed premises of an adult care home, as that term is defined by K.S.A. 39-923.

The direction of the proviso to K.S.A. 39-938 is relatively unambiguous:

"That the administrative rules and regulations of the state board of cosmetology and of the board of barber examiners shall not apply to adult care homes."

In our view, this proviso excepts any facility or service on the *licensed premises* of an adult care home from the administrative rules and regulations of the State Board of Cosmetology. The Board is free to continue to license beauty shops on such premises, if consistent with the laws and rules and regulations of the agency responsible for licensing such homes. It is not free, however, to enforce its own rules and regulations in such beauty shops located on the *licensed premises* of an adult care home, although it must continue to enforce the sanitary rules and regulations of the Department of Health and Environment in such shops.

You inquire, secondly, whether a licensed beauty shop located in an adult care center may care for the hair of nurses and other staff and visitors, in addition to providing such services to patients and residents. There is no statutory basis for such a restriction, and by virtue of the proviso of K.S.A. 39-738, the Board of Cosmetology is not free to enforce such a restriction in such shops.

This is an obviously undesirable situation. The Board of Cosmetology is placed in the position of being required to license certain beauty shops in which it is not free to enforce its administrative rules and regulations. The matter deserves consideration with a view to remedial legislation.

Yours very truly,


VERN MILLER
Attorney General

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