



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

July 30, 1975

ATTORNEY GENERAL OPINION NO. 75-313

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

RE: Cosmetology--Licensed Premises--Demonstrations

Synopsis: The rendering of demonstrations of cosmetological services for commercial purposes constitutes the practice of cosmetology as defined by K.S.A. 65-1902, and is subject to the restriction regarding the licensed premises contained in K.A.R. 69-6-3.

Dear Mr. Fournier:

You indicated that the State Board of Cosmetology has been asked to allow a licensed cosmetologist to demonstrate his techniques by setting up a booth at the Hutchinson State Fair. You state that you denied that request on the basis of your regulations and prior opinions issued by this office. You now ask for my opinion on the matter.

K.S.A. 69-1901 through 65-1909 sets out certain requirements for the practice and teaching of cosmetology in the State of Kansas. The basic requirement is that all persons practicing or teaching cosmetology be licensed. K.S.A. 65-1901. Under K.S.A. 65-1902(a), a "cosmetologist" is:

"A person who, for profit, does or performs any one or more of the following..." [Emphasis supplied]

The Board of Cosmetology requires that such licenses be displayed only in licensed beauty shops. Kansas Administrative Regulation 69-6-3 states thus:

"A cosmetologist, apprentice or manicurist certificate of registration shall be used only in a licensed beauty shop and all cosmetology services done by such cosmetologist, apprentice or manicurist must be upon the premises named in said license."

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It is on the basis of the quoted regulation that the Board denied permission to demonstrate techniques at a fair booth. The regulation extends, of course, only to the practice of cosmetology as defined by K.S.A. 65-1902, which in turn defines the field as prescribed acts performed for profit.

In State ex rel. Wayman v. Johnson, 156 Kan. 191, 131 P.2d 660 (1942), the statute was sought to be applied to a person engaged in the sale of Merle Norman cosmetics. In the course of the sale, it was stipulated, applied to the face and neck of the purchaser various cold creams, skin lotions, powders, rouge and other cosmetics, describing the method of application in each instance. The customer paid no charge for this instruction and preparation, except, of course, so far as it is included in the cost of the cosmetics purchased. The retail sales price of the wares in that case were, it was stipulated, established by the manufacturer, and the only compensation received by the dealer was from the difference between the wholesale price and the retail price. The court pointed out that the "statute defines the cosmetologist as a person who for compensation" does any of the acts enumerated in the statute. The court stated thus:

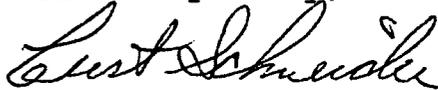
"From a study of the statute it is clear the purpose of the statute was to define and regulate the practice of cosmetology, not to forbid or regulate the sale of cosmetics. In the practice of cosmetology the use of cosmetics is incidental to the performance of the service rendered. Under the agreed statement of facts the chief business of the defendant was the sale of cosmetics and the demonstrations were merely incidental to the sale of the merchandise. In the practice of cosmetology the operator has much to do with the care, training and treatment of the hair. It is not claimed the defendant made any demonstrations as a hairdresser or engaged in the care or treatment of the hair of customers. Defendant makes no charge for the service rendered her prospective purchasers. The price of the cosmetics sold in defendant's studio is established by the manufacturer generally and is the same price whether the demonstration is given by the defendant or not." 156 Kan. at 194. [Emphasis supplied]

In the question you pose, there is no question but that the licensed cosmetologist proposes to demonstrate precisely that for which he or she is licensed, the practice of cosmetology. We are not advised of the purpose of the demonstration. Demonstrations such as those offered at state fairs are most commonly for commercial

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purposes to encourage those attending to utilize the services or products being demonstrated. We assume the demonstration in question here is of like character, that is, it is a demonstration to be offered generally for a commercial purpose. If so, we cannot but conclude that the demonstration, which is of nothing more or less than the art for which the cosmetologist is licensed, constitutes the practice of cosmetology, to which K.A.R. 69-6-3, quoted above, is applicable, and thus, the practice of cosmetology at places other than the premises named in the license is not permitted.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS/PAH/cgm