ATTORNEY GENERAL OPINION NO. 89-82

Louis Armstrong
Administrative Officer
State Board of Barber Examiners
717 S. Kansas Avenue
Topeka, Kansas 66603-3811

Re: Public Health--Examination, Registration and Regulation of Barbers; Practice of Barbering Regulated by Act; Barber Advertisement by Cosmetologist

Synopsis: A licensed cosmetologist cannot advertise his services as those provided by a barber shop unless he is licensed as a barber, even though the services performed by barbers and cosmetologists have a common field of practice. Similarly, a cosmetology shop providing only the services of licensed cosmetologists cannot use a "barbering pole" to advertise. Cited herein: K.S.A. 65-1801 et seq.; K.S.A. 65-1901 et seq.; K.S.A. 1988 Supp. 65-1904a.

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Dear Mr. Armstrong:

As Administrative Officer of the State Board of Barbers you inquire first whether the statutes regulating the practice of barbering, K.S.A. 65-1801 et seq., preclude a licensed cosmetologist from advertising his services as those of a barber shop and second whether a cosmetology shop may erect a "barbering pole" without violating the barbering statutes. You indicate for purposes of your first question that the
licensed cosmetologist in question is a sole proprietor and
has no employees that are either licensed barbers or
cosmetologists. The shop is called Jack's Barber Shop and the
services provided are those of a licensed cosmetologist.

We note that the legal issue presented is not whether a
licensed cosmetologist (or any person) may own or maintain a
barber shop. Any person may own or maintain a barber shop or
a cosmetology shop, regardless of whether the person is
licensed as a barber or cosmetologist. State, ex rel., v.
et seq. (regulation of barbership business) and K.S.A.
1988 Supp. 65-1904a (licensing of a cosmetology salon or

However, both barbers and cosmetologists must be licensed to
practice their occupations. While the two occupations have a
common field of practice, in this state the two are distinct
and regulated by different legislative enactments, K.S.A.
65-1801 et seq. and 65-1901 et seq. A licensed
cosmetologist may do all the things the cosmetology statutes
permit, including those that are common to the practice of
barbering, and a barber may perform all the services of a
licensed barber, including those common to the practice of
cosmetology. State, ex rel., v. Cavender, 131 Kan. 577
(1930). However, a cosmetologist, as any person, is
prohibited from performing work exclusively within the field
of barbering, unless licensed as a barber. K.S.A. 65-1808.
Thus, the legal issue presented by our set of facts is whether
a licensed cosmetologist that advertises his services as those
of a barber shop is unlawfully holding himself out as a
barber. We conclude he is.

A barber shop is defined by K.S.A. 65-1809 as a place, shop or
establishment wherein the practice of barbering is engaged in
or carried out. Advertising the services of a licensed
cosmetologist as those provided in a barber shop indicates to
the public that the practice of barbering is carried on in
that establishment by a licensed barber and unlawfully holds
out the cosmetologist as a barber. This misrepresentation
violates both the barbering statute, K.S.A. 65-1820 and the
cosmetology statute, K.S.A. 65-1907, which prohibit deceptive
advertising. While a licensed cosmetologist in practicing his
occupation may indeed perform many of the services performed
by a licensed barber, the fact remains that the occupations
are distinct as evidenced by two separate regulatory
enactments K.S.A. 65-1801 et seq. and 65-1901 et
seq. Further, cosmetologists are exempted from the
provisions regulating barbers and barbers are exempted from the provisions regulating cosmetologists [K.S.A. 65-1816 and 65-1902] providing a clear indication of legislative intent that the occupations remain distinct and separate. See generally People v. Taylor, 540 P.2d 320, 323 (1975). Therefore, in our opinion a licensed cosmetologist cannot advertise his services as those of a barber shop unless he is a licensed barber even though the services performed by a cosmetologist and a barber have a common field of practice. See Attorney General Opinion No. 75-206 (cosmetology shops may not be listed under "barber shops" in yellow pages of a telephone directory).

Your second inquiry is whether the barbering statutes preclude the use of a "barbering pole" in front of a cosmetology shop wherein only licensed cosmetologists provide services. Attorney General Opinion No. 75-206 (cited above and rendered under a different administration) concludes that listings and advertising of a business establishment and services provided therein by either a licensed barber or cosmetologist may not identify those services or the business as those of [any profession] other than [the] profession for which a license is issued. We concur.

A "barbering pole" has historically advertised an establishment as a barber shop and thus indicated that the services provided are those of a licensed barber. As noted above the barber and cosmetology professions remain separate and are regulated by different legislative enactments. (See State, ex rel., v. Cavender, 131 Kan. 577 (580) (1930) for a historical analysis of the development of cosmetology and consequent enactment of statutes regulating the two occupations.) The occupations prohibit advertising that is deceptive, K.S.A. 65-1820 and 65-1907, and clearly advertising that describes a cosmetology shop as a barbering establishment may readily be deemed deceptive. It is therefore our opinion that a cosmetology shop, wherein only licensed cosmetologists provide services, cannot use a barbering pole to advertise.

In conclusion we opine that a licensed cosmetologist cannot advertise his services as those provided by a barber shop unless he is a licensed barber, even though the services provided by barbers and cosmetologists have a common field of practice. Similarly a cosmetology shop providing only the
services of licensed cosmetologists cannot advertise those services with a "barbering pole."

Very truly yours,

ROBERT T. STEPHAN
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Assistant Attorney General

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