



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 151

Ms. Eileen Hassett
Executive Director
Kansas State Board of Cosmetology
717 S. Kansas Ave.
Topeka, Kansas 66603

Re: Public Health -- Examination and Registration of
Cosmetologists and Beauty Shops -- Salon or Clinic
License

Synopsis: A licensed cosmetologist may lawfully practice
cosmetology only in a licensed salon, a "home shop"
which is in compliance with applicable regulations,
a licensed hospital, nursing home, rest home or an
invalid's home. Accordingly, a licensed
cosmetologist may not lawfully practice the
profession of cosmetology in an unlicensed area of
a shopping mall. Cited herein: K.S.A. 1990
Supp. 65-1901; 65-1902; 65-1904a; 65-1908;
65-1909; K.S.A. 77-502.

* * *

Dear Ms. Hassett:

As executive director of the Kansas state board of
cosmetology, you ask our opinion regarding whether a licensed
cosmetologist is limited to practicing cosmetology in a
licensed salon or clinic.

You inform us that a charitable organization seeks to sponsor
a "cut-a-thon" and proposes that licensed cosmetologists
perform or demonstrate hair cutting and arranging techniques
on individuals at a location other than a licensed salon, e.g.

a shopping mall. The licensed cosmetologists would not profit from performing such services. However, donations in the form of cash or goods would be solicited from the individual by the sponsoring organization. It is this scenario which prompts your question.

We begin our analysis by first examining the legal meaning of the term "licensed cosmetologist." A license is authorization required by law for a person to engage in a profession or occupation. K.S.A. 77-502(c). The profession or occupation under discussion is cosmetology, defined in part as the profession of arranging or bobbing (cutting) the hair. K.S.A. 1990 Supp. 65-1909(d). A cosmetologist is defined as:

"any person, other than a manicurist or cosmetology technician, who practices the profession of cosmetology for profit."
K.S.A. 1990 Supp. 65-1901(c).
(Emphasis added).

With some specific exceptions, Kansas law prohibits persons from engaging in practice as a cosmetologist unless such person holds a valid license issued by the board. K.S.A. 1990 Supp. 65-1902. Violation of this provision is a misdemeanor punishable by a fine of not less than \$10 nor more than \$100, or by imprisonment in the county jail for not less than 10 days nor more than 90 days, or by both fine and imprisonment. K.S.A. 1990 Supp. 65-1908.

A licensed cosmetologist is therefore a person who is authorized by law to practice the profession of cosmetology and to do so for profit. This means that a licensed cosmetologist is authorized but not required, to charge for cosmetology services rendered and may, therefore, donate his or her services. On the other hand, a person who is not licensed as a cosmetologist may perform cosmetology services but may not provide such services for profit. Thus, the law does not make criminal the arranging or cutting of a friend's hair by an unlicensed person so long as such is not done for profit.

The real question, therefore, is not whether a licensed cosmetologist may donate cosmetology services at a charitable fund-raising event, but whether a licensed cosmetologist may perform cosmetology services in other than a licensed salon, regardless of profit.

K.A.R. 69-6-3, regarding care of invalids, provides:

"A cosmetologist . . . license shall be used only in a licensed beauty shop except that a licensed cosmetologist may perform cosmetology service in a licensed hospital, nursing home, rest home or at an invalid's home."

Thus, by regulation, an exception is made authorizing licensed cosmetologists to practice cosmetology in specific settings other than a licensed salon. That regulation was adopted pursuant to statutory authority of K.S.A. 1990 Supp. 65-1904a which establishes salon licensure requirements of application, payment of license fee, and inspection of the premises and equipment pursuant to applicable regulations. In addition, K.S.A. 1990 Supp. 65-1904a contains a proviso that:

"Nothing herein contained shall be construed as preventing any licensed person from practicing cosmetology . . . in a private home or residence if the home or residence complies with [applicable] rules and regulations."

Thus, by statute, another exception is made authorizing licensed cosmetologists to practice cosmetology in "home shops" which meet the requisite standards applicable to salon equipment and premises.

Based on K.S.A. 1990 Supp. 65-1904a and K.A.R. 69-6-3, we opine that a licensed cosmetologist may lawfully practice cosmetology only in a licensed salon, a "home shop" which is in compliance with applicable regulations, a licensed hospital, nursing home, rest home or an invalid's home. Accordingly a licensed cosmetologist may not lawfully practice the profession of cosmetology in an unlicensed area of a shopping mall.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Camille Nohe
Assistant Attorney General