



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 7, 1975

Opinion No. 75-206

Mr. Paul C. Lenard, Chairman
Board of Barber Examiners
801 Harrison
Topeka, Kansas 66612

Dear Mr. Lenard:

We have your inquiry concerning the designation of certain shops as 'barber shops' in the yellow pages of the telephone directory.

K.S.A. 65-1808 provides in pertinent part:

". . . [I]t shall be unlawful for any person to engage in barbering for hire in this state, . . . , to operate a barber shop, . . . to employ any person to engage in the practice of barbering as hereinafter defined, except in conformity with the provisions of this act."

Those provisions require a person to pass satisfactorily an examination and to have a certificate of registration. When these requirements are met, one then may engage in barbering or operate a barber shop.

In K.S.A. 65-1809 a 'barber shop' is defined:

"'barber shop' shall mean any place, shop or establishment, wherein the practice of barbering is engaged in or carried on,"

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Further

"'barbering' shall mean any one or any combinations of the following practices (when done upon the upper part of the human body for cosmetic purposes and not for the purpose of diseases or physical or mental ailments, and when done for payment, either directly or indirectly, or without payment, for the public generally, upon male or female): Shaving or trimming the beard or cutting the hair; giving facial or scalp massages or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances, singeing, shampooing or dyeing, arranging or waving the hair, or applying tonics, applying cosmetic preparations, antiseptic powders, oils, clays, or lotions to the scalp, face, neck or upper part of the body."

Thus an establishment to be designated a 'barber shop' must meet the statutory definitions set out above.

There are parallel statutes which relate to cosmetology and the practice thereof. K.S.A. 65-1902 defines cosmetologist as:

"a person who, for profit, does or performs any one or more of the following: (1) Arranges, dresses, permanent curls, curls, waves, singes, cleanses, dyes or bobs the hair; (2) massages, cleanses, stimulates or manipulates, or performs similar work on, the scalp, face, neck, arms, hands, bust or upper part of the body with the hands or mechanical or electrical appliances; (3) makes use of cosmetic preparations, antiseptics, lotions, creams or other preparations in performing any one or more of the practices described in clauses (1) and (2) of this section; (4) manicures the nails of the hands or removes superfluous hair from the face or any part of the body; or (5) any other beautifying process on any person."

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Anyone wishing to practice cosmetology must have a certificate of registration which will issue upon payment of a fee and satisfactory completion of an examination. Additionally any establishment to be used by such cosmetologist is required to be licensed. [K.S.A. 65-1904a]

As may be seen by the definitions these professions overlap in some areas, notably in the care and treatment of hair. However, the legislature in its wisdom has set out two separate regulatory enactments, one of which governs barbers and another which governs cosmetologists. In fact the statutes are mutually exclusive. That is to say, cosmetologists are specifically exempted from the provisions of the barber act and barbers are exempted from the cosmetology act. [K.S.A. 65-1816 and 65-1901] Reasonable application of principles of statutory construction indicates a legislative intent to establish separate and distinct professions.

Of course, either men or women may practice either profession. But to do so one would have to abide by the statutes, rules and regulations applicable to the profession of one's choice. As examples, a woman who wished to open a barber shop would need to meet the requirements for barbering; likewise for a man to operate and practice in a beauty shop, he would need to meet the requirements for a cosmetologist. In our view the descriptive trade or business name adopted by an establishment where one or the other profession is practiced is dependent upon the type of license the practitioner holds. This being so that some designation would be applicable to promotional listings such as those in the yellow pages.

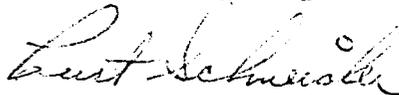
K.S.A. 65-1822 prohibits "practicing or attempting to practice [barbering] by fraudulent misrepresentations." K.S.A. 65-1820 provides that "advertising by means of knowingly false or deceptive statements" shall be grounds for suspension or revocation of a certificate of registration. "Advertising by means of false or knowingly deceptive matter or statement" is similarly ground for revocation of a certificate of registration or license issued to a cosmetologist. K.S.A. 65-1908. Obviously, advertising by one licensed as a cosmetologist which purports to describe the services rendered by that licensee as barbering, or describes a cosmetologist shop as a barbering establishment may readily be deemed to constitute false and deceptive advertisement. Conversely, representation of barbering services as the practice of cosmetology

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may also in appropriate circumstances be deemed to be false, misleading and deceptive advertising.

Accordingly, as stated above, 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 other than profession for which a license is issued.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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