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ATTORNEY GENERAL OPINION NO. 87- 81

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

Re: Public Health--Examination and Registration of
Cosmetologists and Beauty Shops--Cosmetology and
Onychology Schools

Public Health--Examination, Registration and
Regulation of Barbers--Schools or Colleges of
Barbering; Approval by Board

Synopsis: The cosmetology statutory and regulatory scheme does not prevent a school from extending their training beyond the minimum requirements of 1500 hours and up to the maximum twelve month limit. However, a school cannot extend the licensing requirements established by statute and as such must disclose to the student that the additional training is not mandated by the State for purposes of applying to become a licensed cosmetologist.

While barbers and cosmetologists may have a common field, the professions are nonetheless regulated by two different regulatory bodies and as such have different statutory and regulatory requirements. Thus, a school must designate whether a student is enrolled in cosmetology or barbering in order to comply with the requirements of the pertinent regulatory body. Cited herein: K.S.A. 65-1903(2), 65-1912, K.A.R. 69-4-12.

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Dear Mr. Fournier:

As Executive Director of the Kansas State Board of Cosmetology you have requested our opinion regarding a proposal to incorporate barber and cosmetology courses and extend training from 1,500 hours to 1,900 hours as a result thereof.

You indicate that the Kansas School of Hair Styling proposes to require a twelve month course of training for all of their students, incorporating barber and cosmetology training for the first three months (400 hours), and then have the student designate barber or cosmetology. Once designated, the student would enroll in the 1,500 hour course required for licensing. From these circumstances you inquire specifically:

- 1.) Is a school allowed to require an additional 400 hours above the 1,500 hours required for the purpose of licensing?
- 2.) K.S.A. 65-1912 states: Application for an apprentice license allowing a person to practice in a licensed school shall be submitted to the board not more than 15 days after the person's enrollment in the school. Are the Barber and Cosmetology laws relating to this the same; if so, can a school enroll a student for a basic course without designating Cosmetology or Barbering?
- 3.) Is a school allowed to automatically extend training an additional 400 hours without the consent of the student?

Your questions will be answered in the order they were asked. Your first question concerns both the licensing of a school and the licensing of an individual. We will address these issues separately. The curriculum requirements for licensing a school of cosmetology are found in K.S.A. 65-1903(2) and K.A.R. 1986 Supp. 69-3-8. In order to be licensed, a school must provide a specific course of training of not less than 1,500 clock hours of instruction and practice. The period of instruction is limited to not less than nine and not more than twelve months of eight hour days, not more than five days. The proposal in question seeks to extend training to more than 1,500 clock hours and to the maximum time limit of twelve months for purposes of graduation from the school.

The cosmetology statutes regulate occupations and not places. State v. Cavender 131 Kan. 577, 581 (1930). The Board of Cosmetology (Board) regulates the schools by licensing those that meet the requirements established by the legislature. Thus, the Board regulates schools only to the

ensuring that training in this regulated occupation meets the curriculum requirements and time limits established by the legislature. The Board as an administrative agency may not exercise its powers derived from the legislature to modify, alter or enlarge the legislative act which is being administered. Director of Taxation v. Kansas Krude Oil Reclaiming Co., 236 Kan. 450 (1984).

The first and paramount rule of statutory construction is that the intent of the legislature governs when that intent can be ascertained from the statutes. State v. Meredith, 236 Kan. 866 (1985). Since the statute requires a school provide not less than 1,500 hours, there is nothing in the cosmetology statutes to prevent a school from requiring more than 1,500 hours for purposes of being a licensed cosmetology school. However, we must consider all parts of an act in ascertaining legislative intent, Gnadt v. Durr, 208 Kan. 783 (1972), and as such we must consider your question in light of the licensing requirements that an applicant must meet in order to become a licensed cosmetologist. See also State v. Dubish, 236 Kan. 848 (1985).

An applicant for licensure as a cosmetologist need only have completed the required training period in order to apply for licensure. K.A.R. 69-1-1 states in pertinent part: "The application [for licensure] shall include: A statement from the licensed school that the applicant has completed the required training period in a licensed school of cosmetology or completed an apprenticeship in a shop." (Emphasis added.) The required training period for an applicant for examination and licensure is defined in K.S.A. 65-1912(b)(1) which states: "An applicant for examination and licensure as a cosmetologist shall be required to have practiced as an apprentice in a licensed school for not less than 1,500 clock hours or in a licensed beauty shop for not less than 3,000 clock hours." It is important to note at this point that the 1,500 clock hours of instruction and practice must include the curriculum requirements established by K.A.R. 1986 Supp. 69-3-8.

After review of the cosmetology statutory and regulatory scheme, it is our opinion that while there is nothing in the statutes to prevent a school from requiring more than 1,500 hours of instruction for purposes of being a licensed school, a school cannot require more than 1,500 hours for purposes of providing a statement that a student is qualified to apply for licensure as a cosmetologist, assuming the student has

fulfilled the specific curriculum requirements established by K.A.R. 1986 Supp. 69-3-8.

In regard to your second question, only the cosmetology laws require that an application for an apprentice license be submitted within 15 days after an applicant enrolls in a cosmetology school. K.S.A. 65-1912. While the statutes do not address your question regarding a school's designating cosmetology or barbering enrollment, there is case law concerning the similarities and differences of both professions that provides guidance.

In State v. Cavender, 131 Kan. 577 (1930), the Kansas Supreme Court observed that barbering and cosmetology have a "common field of practice" and as such that the statutes are essentially in pari materia. Cavender involved an action to enjoin a barber from doing what the state claimed was the practice of cosmetology. The Court denied the injunction stating that a licensed barber may do all the things the statute permits, including those which are common to the practice of cosmetology, but work exclusively within the field of cosmetology must be done by a licensed cosmetologist and work exclusively within the field of barbering must be done by a licensed barber. 131 Kan. at 581.

Accordingly, it is our opinion that a school must designate whether a student is enrolled in cosmetology or barber training in order to comply with the requirements of the pertinent regulatory body, whose purpose is insuring competent service to the public. See, Keith v. State Barber Board, 112 Kan. 834 (1923). Cited with approval in Cavender, supra.

Your third question, like question number one, concerns additional training above that required for licensure as a cosmetologist. To reiterate your question, you ask whether a school is allowed to automatically extend training an additional 400 hours without the consent of the student. Given the factual circumstances that prompt your question, we will interpret your question to ask whether the contract to attend a school must disclose that the school requires more hours for graduation than the cosmetology laws require for licensure as a cosmetologist.

Reiterating our answer to your first question, the statutes regulate the occupation in so far as setting the minimum requirements for licensure as established by the legislature.

There are minimum requirements for licensing a school and minimum requirements for licensing an individual. In our judgment, a school cannot extend the licensing requirements for an individual beyond those established by the legislature and as such must disclose that the additional training is not mandated by the State for purposes of applying to become a licensed cosmetologist.

In conclusion, it is our opinion that the cosmetology statutory and regulatory scheme does not prevent a school from extending their training beyond the minimum 1500 hour requirement and up to the maximum time limit of twelve months. However, a school cannot extend the licensing requirements established by the legislature and as such must disclose to the student that the additional training provided by that school is not mandated by the State for purposes of applying to become a licensed cosmetologist. Also, in our judgment, a school must designate whether a student is enrolled in cosmetology or barber training in order to comply with the requirements of the pertinent regulatory body, be it the Board of Barbers, K.S.A. 65-1801 et seq. or the Board of Cosmetology, K.S.A. 65-1901 et seq.

Very truly yours,


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