

STATE BOARD OF HEALTH: Supervision of School of Cosmetology. Sections 9089 and 9092 R. S. Mo. 1929 not applicable to public schools

May 7, 1934

5-10



State Board of Health of Missouri
Division of Cosmetology & Hairdressing
Jefferson City, Missouri.

Attention: Mr. H. G. Cherry, Director.

Gentlemen:

This department acknowledges receipt of your letters and enclosures of March 8, 1934, and April 2, 1934. Your letter of March 8th reads as follows:

"I am writing you to ascertain, whether or not, under our law Section 4, schools known as Vocational schools can operate and teach cosmetology, hairdressing and manicuring without securing a certificate from this Department to do so. In other words, can we require them to pay the \$100.00 that is charged the regular schools who are teaching this profession, and require them to teach the same as is required of other schools under our supervision."

Your letter of April 2nd reads as follows:

"Your letter received and in answer will enclose herewith the letter received by this Department from the Hadley Vocational School which will give you all the information desired."

Your enclosure dated January 24, 1934, and signed by Mr. F. J. Jeffrey, Assistant Superintendent in Charge of Vocational Education, reads in part as follows:

"Application is herewith made for a license permitting a school, or class, of cosmetology in the Hadley Vocational School, which is a part of the St. Louis public school system."

"The rules and regulations governing licensed schools as issued by the State Board of Health of Missouri, effective March 1, 1931, will be at all times complied with, and the school will be, of course, open to the inspection of the officials of your Board.

* * * * *

"Pupils who have a four-year high school education before applying for admission to the cosmetology class will be required to complete 1200 hours of practical instruction. The entrance qualifications described in our cosmetology circular will be found to be higher than the minimum given on page 5 of the Board of Health pamphlet. The course of study will be made consistent with that laid down in the pamphlet or modified to meet the conditions of your Board.

"The Board of Education of the City of St. Louis has appropriated \$3000 for equipment, the purchase of which is now under way. The suitability of this equipment has been passed upon by a committee of beauty shop owners of this city. The specifications are at this time open to inspection by your office and the installation must be made in a manner satisfactory to you.

No teacher has as yet been selected. The application of a number are now being considered. The requirements which a teacher must meet in order to be employed in the vocational classes in the public schools is set forth on the attached circular. Sworn proof of a minimum of five years' experience as an operator will be required in order to meet the provisions of the Federal Smith-Hughes Law.

"No tuition will be charged for instruction in this class. Pupils will be required to pay for shop supplies, uniforms, and personal equipment. This charge, for other than equipment, is not to exceed \$5.00 for each term of twenty weeks. The enrollment in this class at the present will be limited to 35 pupils and the maximum for which the equipment is planned is fifty.

"The customer material upon which the pupils of the course will practice will be drawn from the girls matriculating in other courses in the Hadley Vocational School. The services of the class in cosmetology will not be open to the public. Charges for the cost of materials may be made to the pupil customers until such time as it is found that this practice is in conflict with any code which may be established for cosmetology schools or with the rules and regulations of your board.

Section 9089 R. S. Mo. 1929, requires a certificate of registration for the operation of a School of Hairdressing, Cosmetology and Manifuring, and reads as follows:

"It shall be unlawful for any person in this state to * * * conduct a hairdressing or cosmetologist's or manicurist's school, unless such person shall have first obtained a certificate of registration as provided by this article."

Section 9092 R. S. Mo. 1929, sets out the requirements and qualifications that must be set before such certificate may be secured and states as follows:

"It shall be competent for any person, firm or corporation to apply to the state board of health for a certificate of registration of a school for any one or more of the classified occupations within this article upon the payment of a reasonable annual registration fee as determined annually by the said board but in no case to exceed the sum of one hundred dollars. No such school for hairdressers or cosmetologists within this article shall be granted a certificate of registration unless it shall attach to its staff a regularly licensed physician and employ and maintain a sufficient number of competent instructors, registered as such, but not less than one instructor to each twenty students, and shall require a course of training not less than one thousand hours over a period of six consecutive months for the classified occupation of hairdresser and cosmetologist and not less than one hundred fifty hours for the classified occupation of manicurist, such training to include practical demon-

strations, written or oral tests, and practical instructions in sanitation, sterilization and the use of antiseptics, cosmetics and electrical appliances, consistent with the practical and theoretical requirements as applicable to the classified occupations as provided in this article.* * * *

I.

SUPERVISION OF PUBLIC EDUCATION
VESTED IN BOARD OF EDUCATION.

Article XI., Section 1, of the Missouri Constitution provides for free public schools and reads as follows:

"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this State between the ages of six and twenty years."

Article XI., Section 4, of the Missouri Constitution provides for a Board of Education and reads as follows:

"The supervision of instruction in the public schools shall be vested in a 'Board of Education,' whose powers and duties shall be prescribed by law.* * * *

In accordance with this constitutional mandate, the legislature has laid particular duties upon the Board of Education. Section 9379, R. S. Mo. 1929, provides that the board of education shall establish standards, inspect schools, and that the state superintendent must approve the schools. It reads as follows:

"That such board of education shall establish standards and annually inspect, as a basis for approval, all public prevocational and vocational schools, departments and classes receiving state or federal moneys for giving training in agricultural, industrial, home economics and commercial subjects, and all schools, departments and classes

receiving state or federal moneys for the preparation of teachers and supervisors of such subjects. * * * *"

This Section directly places the inspection and supervision of vocational schools in charge of the Board of Education.

Section 9385 R. S. Mo. 1929, defines the term "vocational" in the following manner:

"The following words and phrases as used in the above section shall, unless a different meaning is clearly required by the context, have the following meanings:

"(a) Vocational education shall mean any education of less than college grade, the controlling purpose of which is to fit for profitable employment."

There can be no doubt but that the instruction contemplated by the City of St. Louis falls within the classification of a "vocational" school.

From the foregoing constitutional and statutory provisions, it appears that the regulation, control, supervision and inspection of the public schools, vocational and otherwise, are placed in the Board of Education. What effect then is to be given the statutes which apparently conflict with the duties and powers conferred upon the Board of Education? It is apparent that Section 9379 was enacted pursuant to Section 4 of Article XI of the Constitution, providing that the powers and duties of the Board of Education should be prescribed by law. On the other hand, we find Sections 9089 and 9092 conferring certain duties upon the Board of Health respecting the inspection and supervision of schools of cosmetology, hairdressing and manicuring.

The situation thus presented is somewhat akin in principle to the situation presented in the case of State ex rel. McDowell vs. Smith, 87 S. W. (2d) 50. In this case the Court considered the apparent conflict between the State Purchasing Agent Act and the Highway Act, which latter act was enacted pursuant to Section 44a of Article IV of the Constitution. The constitutional provision provides that the state highway bonds and the State road fund are to "be administered and expended under the direction and supervision of the State Highway Commission."

In that case as in the instant case the problem was one of harmonizing the various statutes with the constitutional provision. As stated by Judge Hays in the Smith case supra:

"* * * With reference to the purchase, and matters connected therewith and incidental thereto, of road material by the commission for use in the construction of state highways, which law prevails as between the State Purchasing Agent Act and what we shall term the Highway Act, if an so far as they may be found to be in conflict? The duty of the Court to reconcile and harmonize these statutes, as far as may be, is fully recognized;* * * * * a fundamental rule of statutory interpretation requires that, if any provision of our constitution may be concerned in the premises, we give that interpretation of the statutes which will harmonize the statutory provisions with the Constitution.* * * * *

The constitutional provision of course must prevail and the statutes if possible harmonized with each other and with the constitution. In considering the constitutional provision in the Smith case supra, Judge Hays stated, l. c. 57:

"* * * The mandatory power conferred by the constitutional amendment is plenary in respect of the commission's power to purchase road construction material for the purposes stated therein. The grant conferring this power contains no delegation to the Legislature, or authority for legislative delegation, of that power or any part of it to any other state officer or agent.* * * * * It need only be noted that the * * * * * commission cannot be shorn of any part of its plenary discretion and power in the premises. Said Purchasing Agent Act not only purports to apply to supplies, but defines that term to mean 'supplies, materials, equipment,' etc., and is in seeming conflict, in respect of materials, with said Highway Act, and also, if construed to include materials purchased for highway construction, would impinge on said constitutional amendment.* * * * *

In the instant case no power or authority for legislative delegation is found and we feel that to place the supervision of vocational classes under the Board of Health will impinge upon Section 4 of Article XI. Therefore, if possible, some other construction must

be placed upon Sections 9089 and 9092 which will effectuate the purpose for which they were enacted and yet give full force and effect to the constitutional provision. As has often been said, the reason for the law is the life of the law. State ex rel. vs. Becker, 233 S. W. 641, 1. c. 649:

"* * * There is a familiar maxim, uniform in its application, that the reason of the law is the life of the law, or, as the pedants put it, ratio legis est anima legis. By the reason of the law we mean, of course, the occasion or moving cause of its enactment. This is the touchstone of correct interpretation.* * * *"

Without question the necessity or moving cause for the enactment of the Cosmetologist Act was to regulate and supervise the occupation and instruction of persons desiring to enter the occupation, which school of instruction was conducted by those seeking a financial profit from such activity. The Cosmetologist Act was designed to insure competent instruction, safe places for instruction, proper, suitable and adequate equipment, and safe and sanitary conditions. Can it be said that there is any necessity for inspection and supervision to insure these things when the activity is conducted by the public school system of the State? We think not, and therefore feel that there was never an intention that this law be applied or construed to regulate or effect vocational instruction conducted by the public school system of the State.

II.

"PERSON" DOES NOT INCLUDE PUBLIC SCHOOL SYSTEM.

Our Conclusions heretofore reached are fortified by a further reference to Section 9089 of the 1929 revision. It is to be noted that this section provides:

"It shall be unlawful for any person in this state to conduct a * * * * school." * * *"

This Section does not indicate an intention to include the public schools as possible violators of the provisions of the Act. It is recognized that the term "person" is not of itself sufficient to include the public schools. As stated in State ex rel. vs. Gordon, 231 Mo. 547, 1. c. 574:

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"* * * a school district is but the arm and instrumentality of the State for one single and noble purpose, viz., to educate the children of the district--a purpose dignified by solemn recognition in our Constitution.* * *"

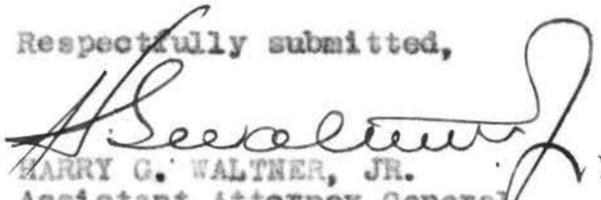
This is clearly stated in the case of Waddell vs. Board of Directors, 175 N. W. 66, L. C. 67, wherein it is stated:

"The defendant is a school corporation. It is a legislative creation. It is not organized for profit. It is an arm of the state, a part of its political organization. It is not a "person" within the meaning of any bill of rights or constitutional limitation. It has no rights, no function, no capacity except such as are conferred upon it by the Legislature.* * *"

CONCLUSION.

It is therefore the opinion of this office that the State Board of Health cannot require the payment by the Board of Education of the City of St. Louis of the registration fee provided for in Section 9092 R. S. Mo. 1929, and that the Board of Health is without power to require the same instruction as is required of other schools under its supervision.

Respectfully submitted,


HARRY G. WALTNER, JR.
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

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