

COSMETOLOGY: The Board of Health for its power to make rules and regulations governing examination of applicants, can charge applicants a fee of \$1.00 for the rental of equipment necessary for said examination in addition to the regular examination fee of \$10.00 as provided under Section 9094, R. S. Mo. 1929

July 23, 1936.

Mrs. Nellie L. Killion, Director
Division of Cosmetology & Hairdressing
Jefferson City, Missouri



Dear Madam:

You recently consulted this department in person and submitted the form of notice of examinations and instructions to applicants for our consideration.

It appears that this department, on July 10, 1936, rendered an opinion to Honorable D. A. Pollard, Member of the House of Representatives of the 58th General Assembly, at Calhoun, Missouri, in which it was held in substance that the State Board of Health could only charge the fees enumerated in the statutes, and that, if the statutes did not provide for additional fees, the Board could not exact additional fees; and it further held in substance that Section 9094, R. S. Mo. 1929, provided that the examination fee of \$10.00 was the only fee which the Board could exact from the applicant desiring to take the examination.

In view of this decision, you desire our opinion as to the legality of Instruction No. 4, which is as follows:

"Be prepared to pay one dollar (\$1.00) for use of cosmetics, towels and other service furnished by the school."

You appear to be familiar with the provisions of Sections 9094, 9095, 9096, 9098 and 9106, R. S. Mo. 1929, which were contained in the opinion rendered to Mr. Pollard and relied on as authority for the conclusion contained in that opinion. In addition, however, we respectfully refer you to Section 9097, R. S. Mo. 1929, which is as follows:

"The examination of applicants for certificates to practice under this article shall be conducted under the rules prescribed by said state board of health and shall include both practical demonstrations and written and oral tests in reference to the practices for which a license

is applied for and such related studies and subjects as the state board of health may determine necessary for the proper and efficient performance of such practices and shall not be confined to any specific system or method, and such examinations shall be consistent with the practical and theoretical requirements of the classified occupation or occupations as provided by this article."

By the above quoted section, the board of health prescribes rules for the examination of applicants. Therefore, under the instructions to applicants, number 4 may be treated as a rule prescribed by the State Board of Health. By careful reading of Rule No. 4, it appears that the \$1.00 fee exacted from the applicants is for the use of certain articles. From your explanation of the examination of the applicants, it is necessary to conduct said examination by the use of not only cosmetics, towels, etc. but also facial chairs, permanent wave machines, manicure tables and other electrical equipment. We assume that, in all probability, no applicant possesses such equipment and articles necessary for conducting the examination; hence, it becomes necessary for the board, in order that said applicant can be thoroughly tested as to the applicant's qualifications, to rent such articles. The \$1.00 fee in question then becomes a rental fee necessary for the applicant, and for the applicant's own use, instead of a fee exacted by the board as the \$10.00 fee mentioned in Section 9094.

Under section 9106, R. S. Mo. 1929, the fees for examination and certificate, as provided in this article, are to be paid in advance to the Secretary of the State Board of Health and by him, each month, paid into the state treasury to the credit of the general revenue fund. By your explanation of the matter, the \$1.00 fee exacted from the applicant for the rental of numerous articles necessary in the examination of applicant, is paid to the School of Cosmetology or other persons having such equipment for rent and does not become a part of the regular fees for examination which must be paid into the State Treasury.

We are therefore of the opinion that Rule No. 4, made by the Board for exacting a rental fee in addition to the \$10.00 fee mentioned in section 9094, supra, is a legal fee and the same can be exacted under the rules and regulations permitted

Mrs. Nellie L. Killion

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by the Board under Section 9097, R. S. No. 1929, and our opinion to Mr. Pollard of July 10th is overruled to that extent.

Respectfully submitted,

OLLIVER NOLEN
Assistant Attorney-General.

APPROVED:

JOHN W. HOFFMAN, JR.
(Acting) Attorney-General.