

PENAL INSTITUTIONS:

PRISONERS:

BARBERS:

Prisoners may do barber work for guards and other employees of penal institutions if the commissioners of the department of penal institutions permit it.

February 28, 1938

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Mr. J.H. Skaggs, Treasurer
Barbers' State Board of Examiners
for State of Missouri,
705 Federal Commerce Trust Bldg.,
208 N. Broadway,
St. Louis, Missouri.



Dear Sir:

This is to acknowledge receipt of yours of February 24, 1938, requesting an official opinion from this department which is as follows:

"I have received numerous complaints from the licensed barbers in Jefferson City to the effect that the prison barbers in the Penitentiary are doing the barber work for the Guards, Attendants and various other state Employees working at the Penitentiary and receiving State Salaries.

I have also received a complaint from the Barbers Union at Jefferson City wherein they state that they can see no objection to the prison barbers doing work for the prisoners in the institution but they do not feel that they should be permitted to do barber work for the various State employees working there. This work they feel should go to the licensed barbers in Jefferson City.

Therefore, I would appreciate an opinion from you as to whether or not it is lawful for prisoners who are unlicensed barbers to practice the occupation of barber on the persons of various State Employees who are working at the penitentiary and receiving State Salaries.

Hoping to receive this opinion from you in regards to this matter at your earliest possible convenience, I am, "

The commissioners of the department of penal institutions manage and control the State Penitentiary at Jefferson City, Missouri.

Section 8328 R.S. Mo. 1929 provides as follows:

"With reference to the said state penitentiary and prison located at Jefferson City the commissioners of the department of penal institutions shall have and exercise all the rights and powers, and perform all the duties and functions, heretofore exercised and performed by the state prison board as set forth and defined in article 5, of this chapter, and such other powers and duties with reference thereto as may be authorized by law."

By this section the commissioners have the powers and duties which the state prison board had prior to its passage. Section 8338 R.S. Mo. 1929 provides as follows:

"The state prison board shall, subject to law, have the exclusive government, regulation and control of the Missouri state penitentiary, the Missouri reformatory, the industrial home for girls, the industrial home for negro girls and of all other penal or reformatory institutions hereafter created and of all persons who now are or who hereafter shall be legally sentenced to either of the institutions hereinabove mentioned or referred to and who shall be committed to the custody of said board, and said board shall make and enforce such by-laws, rules and regulations as they from time to time deem necessary and proper in the management of all institutions or persons now or hereafter legally committed to said board, and shall be vested with and possessed of all other powers and duties necessary and proper to enable it to carry out fully and effectually all the purposes of this article. Said board shall employ and at all times control a warden, deputy warden, superintendent of industries, superintendents, matrons, physicians, chaplains, trade foremen, turnkeys and guards, and all other officers and employes as the board may, under law, from time to time deem necessary and proper for the efficient administration of said board."

And Section 8341 R.S. Mo. 1929 provides as follows:

"The state prison board shall at all times and under all circumstances mentioned or authorized under this article reserve the supervision of all prisoners under sentence and committed to said board."

Chapter 103 R.S. Mo. 1929 contains the laws of this state relating to barbering and the State Board of Barber Examiners. Section 13533 R.S. Mo. 1929 which is a part of the aforesaid chapter defines the term "barber" as follows:

"Any person who is engaged in the capacity so as to shave the beard or cut and dress the hair, for the general public, shall be construed as practicing the occupation of barber, and the said barber or barbers shall be required to fulfill all requirements within the meaning of this chapter."

Only the person who barbers for the "general public" is within the act and subject to the regulation prescribed by the aforesaid chapter.

From our research on this question, we do not think that the prisoners who do barbering for guards and employees of the prison would come within the classification of the barber as defined by the statutes because they are not holding themselves out to do such work for the general public.

We do not find any statutory provisions relating to convicts which prohibit them from performing this work in the prison, providing the prison officials permit it, nor we do not find any law prohibiting the guards or employees of these institutions from having such services performed by the prisoners if they so choose.

By Section 8338, supra, this regulation is entirely within the powers of the commissioners of the department of penal institutions. The legislature has not delegated to any other person or body the supervision and regulation of the conduct or the prisoners at the penitentiary.

CONCLUSION

It is, therefore, the opinion of this department that the convicts who do barber work for guards and employees at the state

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prison and for prisoners thereat, do not come within the provisions of chapter 103, R.S. Mo. 1929 entitled "Barbering--State Board of Barber Examiners", and that as they do not engage in barbering for general public, they are not barbers as defined by Section 13533.

We are further of the opinion that the commissioners of the department of penal institutions only have authority to permit or prohibit the convicts from doing this work for guards and other employees of said institution.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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