

BARBER BOARDS: The State Board of Barber Examiners is not empowered to require of apprentices or students qualifications additional to those in Section 10134, R.S. Mo. 1939.

October 16, 1947

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Honorable James V. Conran
Prosecuting Attorney
New Madrid County
New Madrid, Missouri

Dear Sir:

This is in reply to your letter of October 3, 1947, requesting an opinion from this department, reading as follows:

"We are finding that a goodly number of the young GI returning to this part of the State are anxious to become barbers. For quite some time, we have not had enough barbers down here to supply the demand.

"In attempting to become apprentices they run into a very stringent interpretation of the law by the State Barber Board. The Section that appears to apply is number 10134, R. S. Mo. 1939.

"As we interpret this, it is only necessary for a licensed barber to put an apprentice to work and file with the Board the name and age of said apprentice along with a remittance of \$5.00 for registration. The Board seems to require an application to become an apprentice and qualifications satisfactory to them, from the apprentice, which does not appear to be the intent of the Statute. If a prior license or registration was required, why would the law require the barber to immediately file the name and age of the apprentice with the Board, etc? They would already have that information.

"Taking the Statute as a whole it seems to us that the intention of the Legislature was to let anyone (the health requirements not being here considered) to be an apprentice barber under any licensed barber in the State, but only one to a barber; the other requirements relate only to schools and barbers desiring to teach up to ten apprentices. We are not inclined to go along with the interpretation of the Barber Board; certainly not to the point of prosecution of an apprentice under this Section."

Your inquiry calls for an interpretation of Section 10134, R.S. Mo. 1939, which reads as follows:

"Nothing in this chapter shall prohibit any person from serving as an apprentice in said trade under license issued by the board under a barber authorized to practice in the same, under this chapter, nor from serving as a student in any school or college for teaching said trade under the instruction of a qualified barber: Provided, that in no barber shop shall there be more than one apprentice to two barbers authorized under this chapter to practice said occupation; but all barber shops having but one chair shall be entitled to one apprentice; that all barber schools and colleges shall have not less than one teacher or instructor for every ten students: Provided, that all barbers, or barber schools or colleges, who shall take an apprentice or student, shall immediately file with said board the name and age of each of such apprentices or students, and the said board shall cause the same to be entered in a register kept for that purpose; for which registration a fee of five dollars shall be paid to the treasurer of the board by such apprentice or student: Provided, that any firm, corporation or person, desiring to conduct

a barber school or college in this state, shall first secure from said board a permit to do so, and shall keep the same prominently displayed. For such permit there shall be paid to and collected by said board an annual fee of one hundred dollars to be paid on or before January 31st of each year: Provided further, that said board shall have the right to pass upon the qualifications, appointments, and course of study in said college or barber shops where apprentices are taught the occupation of barbering; and provided further, that said board shall have the right and power to revoke the certificate, permit or license of any such barber school or college, instructor or teacher therein or instructor in any barber shop, for any violation of the provisions of this section."

You will note in the first part of this statute that the language clearly and succinctly states:

"Nothing in this chapter shall prohibit any person from serving as an apprentice in said trade under license issued by the board under a barber authorized to practice in the same, under this chapter, nor from serving as a student in any school or college for teaching said trade under the instruction of a qualified barber: * * *" (Underscoring ours.)

A fundamental rule of statutory construction was laid down by the Court in the case of Artophone Corporation v. Coale, 345 Mo. 344, l.c. 353:

" * * * Of course 'The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words of the statute if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, and 'the manifest purpose of the statute, considered historically,' is properly given consideration.' (Cummins v. K. C. Pub. Serv. Co., 334 Mo. 672, 684, 66 S.W. (2d) 920, 925 (7-10).) * * *"

The Legislature uses the terminology, "any person," indicating an intent to allow all persons who so desire and who follow the prescribed procedure to apprentice themselves to a qualified barber or to attend qualified barber schools. The qualification provisos of the statute are directed against the barber shops or colleges where apprentices or students are taught the occupation of barbering, and not against the students themselves. The Board apparently has some discretion as to the equipment, qualifications of instructors, etc., by virtue of the third proviso which gives it the "right to pass upon the qualifications, appointments, and course of study in said college or barber shops where apprentices are taught the occupation of barbering." But, as we interpret this statute, that proviso does not give the Board the right to set up additional qualifications for apprentices or students before issuing licenses.

In 37 C. J., page 238, the general rule is stated:

" * * * Except where the licensing board or officer is vested with discretionary power in granting or refusing licenses, an applicant, upon complying with the conditions imposed, is entitled to a license as a matter of right, and, in some cases, may enforce his right by mandamus. But where other conditions are imposed, he is not entitled to a license as a matter of course by merely paying or tendering the fee or tax required. In the absence of special authority therefor, the licensing board or officials, in passing on applications for licenses, cannot prescribe conditions or requirements in the case of a particular application, in addition to those prescribed by statute or ordinance, with which applicant has already complied."

And again, at page 240:

"The power vested in the board or officer to grant licenses upon the applicant complying with the prescribed conditions, unless mandatory in terms, carries with it, either expressly or impliedly, the power of exercising, within the limits prescribed by the act or ordinance, a

reasonable discretion in granting or
refusing licenses. * * * *"
(Underscoring ours.)

A question which arises is whether or not the fact that the Board is empowered to issue licenses implies a power to set up additional requirements to be met by those applying for licenses.

In the case of Lauck v. Reis, 310 Mo. 184, the Court had before it a question of whether or not the term "licensing" included within its meaning, by implication, the term "regulating." The Court said, l.c. 199:

"The word or term 'regulating' is broader in its scope and meaning than the word 'licensing.' The word 'regulate' is defined, 'to adjust or contend by rule, method, or established mode; govern by or subject to certain rules or restrictions; to direct by rule or restriction; to subject to governing principles or laws.' (Webster's New International Dictionary; Century Dictionary.) The word 'license' is defined, 'to permit or authorize; to give permission; to grant authority to do an act which, without such authority, would be illegal or inadmissible.' (Webster's and Century Dictionaries.) The power to regulate may include the power to license, but the power to license does not embrace the power to regulate. The distinction is clearly and succinctly expressed in Pacific University v. Johnson, 47 Ore. 448, 84 Pac. 704, 706, wherein the Supreme Court of Oregon said: 'To license is one thing and to regulate another. To license means to permit, to give authority to conduct and carry on; while to regulate means to prescribe the manner in which a thing licensed may be conducted.'"

As the Legislature did not give the Board express authority to set up qualifications for apprentices or students, and in the light of the general rules applicable to licensing boards and the Lauck case, above, we do not feel that the Board has

the implied power to set up qualifications, other than those in Section 10134, above, for the admission of apprentices or students.

A second part of your inquiry seems to raise a question as to whether the requirements of Section 10134, above, would apply to single chair barber shops. We think a careful reading of Section 10134 clearly shows that it was the intention of the Legislature to include one chair barber shops within the purview of the statute, as witness the underlined words in the statute:

" * * * that all barbers, or barber schools or colleges, who shall take an apprentice or student, * * * that said board shall have the right to pass upon the qualifications, appointments, and course of study in said college or barber shops where apprentices are taught the occupation of barbering; * * * or instructor in any barber shop, * * *"

Your attention is also called to the wording of Section 10133, R.S. Mo. 1939, which further shows the intention of the Legislature to bring the control of all persons teaching barbering in this State under the direction of the State Barber Board.

Conclusion.

It is the opinion of this department:

(1) That the State Board of Barber Examiners does not have the right to require qualifications additional to those set out in Section 10134, R.S. Mo. 1939, from those applying for a license as an apprentice or student.

(2) Section 10134, R.S. Mo. 1939, applies to single chair barber shops and all persons licensed to instruct in barbering in this State.

Respectfully submitted,

APPROVED:

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