

ADMINISTRATIVE LAW: Barber Board does not have power to

BARBERS: prescribe rule limiting period of time

RULES AND REGULATIONS: within which the eighteen-month apprenticeship must be spent.



December 6, 1954

Mr. Charles F. Quinlin
Secretary, State Board of
Barber Examiners
906 Olive Street
St. Louis, Missouri

Dear Mr. Quinlin:

This is in response to your request for an opinion dated November 24, 1954, which reads as follows:

"It has been brought to the attention of the Barber Board that there is some dissatisfaction with the current status of the law as pertains to apprentices in the barber profession. As provided in Sub-section 3 in Section 328.080, R.S. Mo. 1949, a person desiring to practice barbering in the state is required to have either studied the trade for two years as a registered apprentice, or attended a six-month school and served an additional eighteen months as a registered apprentice before being authorized to receive a certificate of registration authorizing him to practice the trade in this state.

"Certain barbers in the state are accepting apprentices under this provision of the law, only to have them quit after a period of a few months during the eighteen-month training period; after a period of several months or even several years these one-time apprentices will return and pick up where they left off on their apprentice period, thereby being authorized to take the examination and to receive their certificate of registration upon the completion of the stipulated period as provided for in the

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statutes, however long a period of time elapses between the start of their training and their examination for a barbers certificate.

"It has always been the interpretation of the Barber Board that we are not justified under the present status of the law in requiring that this apprenticeship be served continuously or within a stipulated period. As previously stated, there has been some agitation among some of the barbers to require that a time limit be set during which this training can be completed.

"Would you please advise the Board of your opinion as to whether or not a time limit such as this would be justified by the action of the Board, or is it your opinion that this is a matter of which the Legislature would have to take cognizance.

"A resolution was adopted at the last convention of the State Journeymen Barbers to require that, as stated above, a time limit be set within which an apprentice must complete his training for his license, making an exception only in the case of a man serving in the Armed Forces.

"Your opinion as to the above would be appreciated."

The State Board of Barber Examiners is an administrative body and as such is limited in its rule making powers. It is said in 42 Am. Jur., Section 53, page 358:

"The scope and extent of the power of administrative authorities to enact rules and regulations is limited by the Federal and state Constitutions and the statutes granting them such power. In many cases the power to make rules and regulations on a particular subject is a limited power, having respect to mode and form and time and circumstance, and not to substance. But in other cases the power is much more extensive and substantial and may be understood to give plenary control over those

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subjects. The rule of construction as to the extent of the power granted depends, at least in some sort, upon the nature of the subject matter. The extent of the power must be determined by the purpose of the act and the difficulties its execution might encounter. Since the power to make regulations is administrative in nature, legislation may not be enacted under the guise of its exercise by issuing a 'regulation' which is out of harmony with, or which alters, extends, or limits, the statute being administered, or which is inconsistent with the expression of the lawmakers' intent in other statutes. The administrative officer's power must be exercised within the framework of the provisions bestowing regulatory powers on him and the policy of the statute which he administers. He cannot initiate policy in the true sense, but must fundamentally pursue a policy predetermined by the same power from which he derives his authority.
* * *

Sutherland's Statutory Construction, Section 6603, says:

"Administrative agencies are purely creatures of legislation without inherent or common-law powers. The general rule applied to statutes granting powers to administrative boards, agencies or tribunals is that only those powers are granted which are expressly or by necessary implication conferred, and the effect usually has to accomplish a rather strict interpretation against the exercise of the power claimed by the administrative body. The rule has been variously phrased, including language to the effect that a power must be 'plainly' expressed; that a power is not to be 'inferred' or taken by 'implication'; or that the jurisdiction of an administrative agency is not to be 'presumed.'"

See also State ex rel. Springfield Warehouse and Transfer Co. et al. v. Public Service Commission, 240 Mo. App. 1147, 225 S.W. (2d) 792, 794.

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The power to require an apprentice to serve the eighteen-month apprenticeship period prescribed in Section 328.080, RSMo 1949, Cum. Sup., 1953, within a specified time limit is a legislative power. It is said in 42 Am. Jur., Section 36, page 329:

"Legislative power is the power to make, alter, or repeal laws or rules for the future. To make a rule of conduct applicable to an individual who but for such action would be free from it is to legislate. * * * Administration has to do with the carrying of laws into effect, their practical application to current affairs by way of management and oversight including investigation, regulation, and control, in accordance with and in execution of the principles prescribed by the lawmaker."

The Board of Barber Examiners has power to make rules concerning sanitation subject to the approval of the Division of Health of the State Department of Public Health and Welfare, but, inasmuch as we find no statute granting the Board the authority to make a rule requiring the eighteen-month apprenticeship to be served within a limited period of time, we must conclude that the making of such rule is beyond the power of the Board.

CONCLUSION

It is the opinion of this office that the State Board of Barber Examiners does not have the power to prescribe a rule limiting the period of time within which the eighteen-month training period, provided for in Section 328.080, RSMo 1949, Cum. Sup., 1953, must be spent.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Very truly yours,

JOHN M. DALTON
Attorney General

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