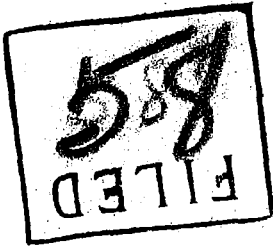


STATE BOARD OF
COSMETOLOGY:

Any registered operator is qualified to train an apprentice in any of the classified occupations governed by the cosmetology laws. Those who train an apprentice are not subject to the provisions of Section 329.080 VAMS, requiring an instructor's license to teach the classified occupations.

October 5, 1959



Mrs. Jakaline McBrayer
Executive Secretary
State Board of Cosmetology
Capitol Building
Jefferson City, Missouri

Dear Mrs. McBrayer:

This is in reply to your recent inquiry relating to whether a person who instructs apprentices in their cosmetologist's or manicurist's establishment must also be licensed as an instructor. Your inquiry reads:

"The Board Members have ask that I write you for a written opinion on our new Law, Senate Bill 283(enclosed), Section 329.040 Sub Paragraph 3 and Section 329.080 Sub paragraph 1. Relative to persons who must hold instructors licenses in order to teach cosmetology."

After ascertaining by phone in more particularity the facts relating to your inquiry, we have rephrased your question as follows: Do the provisions of paragraph 3, Section 329.040, VAMS, relating to the training of cosmetologists by apprenticeship conflict with paragraph 1 of Section 329.080, VAMS, requiring that persons teaching such occupation shall be registered as an instructor or, if a person is trained by apprenticeship rather than a cosmetology school, does the person instructing the apprentice in such occupation also have to be a licensed instructor, whether or not such person holds himself out as conducting a school for cosmetologists?

So that we may better determine the answer to this question, we shall examine both provisions in detail. These sections read, in part:

"329.040. Certificate of registration for school
required, fee standards

* * * * *

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3. Nothing contained in this chapter shall prohibit registered operators within a hair dressing or cosmetologist's or manicurist's establishment from teaching any of the practices of the classified occupations in their regular course of business, provided the owner or manager thereof does not hold himself out as a school and does not hire or employ or teach regularly at any one and the same time, more than one apprentice to each operator regularly employed within their business, and said owner or manager does not accept any fee for instruction. As amended Laws 1959, p. - -, S.B. 283, §1."

"329.080. Instructors, registration, qualifications, fees, exemptions

1. Any person teaching any of the classified occupations shall be registered as an instructor. To be registered as an instructor, the person shall have a Missouri operator's license and shall have had at least one year's actual experience as a Missouri operator, and shall pass an examination for an instructor's license to the satisfaction of the state board of cosmetology. The examination fee for an instructor's license shall be five dollars and the renewal fee for the license shall be three dollars annually, in addition to the regular operator's fee."

The word "teaching" seems, at first glance, to be identical in its meaning in both sections, however, we do not feel that the word "teaching" as used in Section 329.080, VAMS, refers to those who teach an apprentice. To the contrary, there is an inference that Section 329.080, VAMS, refers only to those teaching the classified occupations in a school of cosmetology.

Note first that paragraph 3 of Section 329.040, VAMS, reads to the effect that nothing in this chapter shall prohibit "registered operators" from "teaching" the classified occupations in their regular course of business so long as they do not (1) teach regularly more than one apprentice to a registered operator. (2) That the owner or manager thereof does not hold himself out as a school, and (3) the owner or manager does not accept any fee for instruction. Other than these restrictions on the "teaching" of apprentices, this section would by implication seem to exclude all other restrictions within the chapter as

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to registered operators teaching an apprentice within a shop.

Section 329.040, VAMS, is the section providing for the licensing, registration and standards for schools of cosmetology and paragraph 3 of that section is an exception to the school laws. Paragraph 2 of that section provides, in part, as follows:

"2. No such school for hairdressers or cosmetologists within this chapter 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, * * * * (Emphasis ours.)

So it can be seen that the "school must employ and maintain competent instructors registered as such" who may teach up to twenty students at one time. Paragraph 3 in contrast speaks only in terms of "registered operators," who are restricted to the instruction of one apprentice at any one time. There is an inference here that since the apprenticeship provision is an exception to the school law and the school law requires "competent instructors, registered as such," that had the Legislature wished to do so they would have included a provision in paragraph 3 of Section 329.040, VAMS, that if a person were to train an apprentice that they must also be a licensed instructor.

Clearly, these factors indicate that "registered operators" who instruct apprentices are not persons whose vocation it is to teach or to instruct, but to the contrary, there is an indication that any instruction or teaching done by them is only incidental to "their regular course of business." Section 329.050, RSMo, the section relating to qualification of apprentices and students to be an applicant for examination or registration under the cosmetology laws, further strengthens this premise. This section reads, in part:

"1. Applicants for examination or registration under this chapter shall possess the following qualifications:

* * * * *

"(2) They shall have served and completed as an apprentice under the supervision of a registered operator the time and studies required by the board which shall be not less than one year for hairdressers and cosmetologists and not less than

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three months for manicurists; or shall have had the required time in a registered school of at least one thousand hours' training over a period of six consecutive months for the classifications of hairdressers and cosmetologists and at least one hundred fifty hours for manicurists, except that operators having taken manicuring together with hairdressing or cosmetology shall not be required to serve the extra hours otherwise required to include manicuring; and" (Emphasis ours.)

* * * * *

In contrast, Section 329.080, VAMS, indicates that one who becomes an instructor must meet requirements in addition to an operator's license and is a person whose vocation it is to teach the classified occupations subject to the cosmetology laws.

CONCLUSION

Therefore, it is the opinion of this office that a person who trains an apprentice in any of the classified occupations governed by the cosmetology laws of this state, is not subject to the provisions of Section 329.080, VAMS, requiring an instructor's license to teach the classified occupations. To train an apprentice one need only be a registered operator.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Jerry E. Buxton.

Yours very truly,

John M. Dalton
Attorney General

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