

TOILETS:
SANITATION: ✓
COSMETOLOGY, BOARD OF:
REGULATIONS: ✓
ADMINISTRATIVE LAW: ✓

The power to adopt sanitary rules as set forth in Section 329.210, RSMo 1959, does not confer upon the State Board of Cosmetology the authority to require establishments coming within its jurisdiction to install toilet facilities.

January 12, 1962



Mrs. Jakaline McBrayer
Executive Secretary
State Board of Cosmetology
Capitol Building, Room 127
Jefferson City, Missouri

Dear Mrs. McBrayer:

This is in reply to your request for an opinion of this office concerning the rule making powers of the State Board of Cosmetology, stated as follows:

"Do we have the authority to require shops to put in toilets in their shops?"

Nowhere in Chapter 329, RSMo 1959, which establishes the Board's control and supervision of cosmetologists, hairdressers and manicurists, do we find a legislative mandate to that effect. However, your regulations adopted pursuant to Section 329.210, RSMo 1959, and filed in accordance with Article VI, Section 16, of the Constitution of Missouri on July 28, 1961, allude to such a requirement in two places:

"Section 5. * * * Adequate and conveniently located toilet facilities shall be provided, and separated by self closing doors, for all beauty shops and schools of beauty culture and other establishments in which cosmetology, hairdressing and manicuring is practiced. * * *"

"Section 7. * * * All shops which exist in buildings also having living quarters must have toilet facilities located separately and apart from the living quarters."

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If these regulations may be deemed to have been adopted in furtherance of some statutory power vested in the State Board of Cosmetology then they are lawful and must be enforced as the law of the land.

To resolve the question, therefore, a review of the Board's rule making authority is necessary. The only statutory direction available in that respect is to be found at Section 329.210, RSMo 1959.

"Powers of board. -- The board shall have power to:

"(1) Prescribe such sanitary rules as it may deem necessary with particular reference to the precaution necessary to be employed to prevent the creating and spreading of infectious and contagious diseases, and it shall be unlawful for the owner or manager of any shop or school in any city having a population of more than ten thousand inhabitants to permit any person to sleep in or use for residential purposes any room used wholly or in part as a hairdressing, cosmetological or manicurist's establishment. * * *"

The pertinent authority conferred therein is the power to prescribe sanitary rules if it is possible to show that providing toilet facilities in a beauty shop or school of beauty culture or other establishment in which the named arts are practiced is a sanitary requirement.

In many instances the legislature itself has directed that certain named establishments furnish toilet facilities. A review of all of these is not necessary here but Section 196.210, RSMo 1959, pertaining to places where food is prepared will serve as an example. There the subject is amply covered and is so complete, as to the location and construction of such required toilets, that it need not be amplified by regulation of any kind. Nowhere in the statutes do we find the general authority to require the installation of toilet facilities conferred upon any regulatory agency without the legislature first specifically authorizing such authority.

Since the legislature has seen fit in many instances to require the installation of toilet facilities in certain named establishments, none of them coming within your jurisdiction, and since the legislature has failed to

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specifically authorize you to adopt regulations concerning same, it must appear obvious that it was not their intent to do so. The generally accepted limitation upon the power of all governmental administrative agencies to promulgate rules and regulations is to be found in 73 C.J.S., page 414, § 94:

"A public administrative body may make only such rules and regulations as are within the limits of the powers granted to it and within the boundaries established by the standards, limitations, and policies of the statute giving it such power, and it may go no further than to make administrative rules and regulations which fill in the interstices of the dominant enactment. It may make only rules and regulations which effectuate a law already enacted, and it may not make rules and regulations which are inconsistent with the provisions of a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute, and it may not, by its rules and regulations amend, alter, enlarge, or limit the terms of a legislative enactment."

Clearly you are not to enlarge upon the authority delegated to you by the legislature to prescribe sanitary rules with particular reference to the precaution necessary to prevent the creating and spreading of infectious and contagious diseases. One fails to see how the Board expects to prevent the creation and spread of infectious and contagious diseases by requiring establishments under its jurisdiction to install toilet facilities. Certainly it must be conceded that the availability of such facilities to customers and employees of such establishments would further the cause of their comfort and convenience, but that really has nothing to do with the evil which the legislature seeks to prevent by authorizing you to adopt rules and regulations.

CONCLUSION

The power to adopt sanitary rules as set forth in Section 329.210, RSMo 1959, does not confer upon the State Board of Cosmetology the authority to require establishments coming within its jurisdiction to install toilet facilities.

Mrs. Jakaline McBrayer

The foregoing opinion, which I hereby approve, was prepared by my assistant, Howard L. McFadden.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

HLM:BJ