

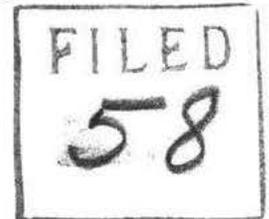
STATE BOARD OF COSMETOLOGY: The State Board of Cosmetology may
RULES: issue reasonable regulations: (1) pre-
REGULATIONS: scribing the course of study in a
ADMINISTRATIVE LAW: licensed school; (2) prescribing the
COSMETOLOGY: minimum floor space for obtaining and
keeping a school license; (3) requir-
ing advertising by schools to be non-

deceptive so that work done by students must be advertised as such;
(4) prescribing a reasonable examination for applicants for school
licenses; (5) prohibiting the use of brush curlers in licensed
schools and shops if it is impracticable to keep them sanitary or
making reasonable sanitary requirements.

The State Board of Cosmetology has not been authorized by statute
to make regulations: (6) prohibiting a licensed school owner from
having a licensed shop; (7) requiring a shop owner who teaches an
apprentice to be a licensed instructor.

OPINION NO. 58

May 15, 1964



Mrs. Jakaline McBrayer, Executive Secretary
Missouri State Board of Cosmetology
Rooms 127-128-129, Capitol Building
Jefferson City, Missouri

Dear Mrs. McBrayer:

In three letters addressed to this office you requested
the opinion of this office on various questions pertaining to
the extent of the power of the State Board of Cosmetology to
make rules and regulations.

In general, an administrative agency has the power to make
any reasonable rule or regulation, which it is expressly authorized
to make by statute or which is authorized by necessary and
reasonable implication of the statute.

This general rule is stated at 1 Am. Jur. 2d, Administra-
tive Law, §97, p. 894:

"The power of administrative agencies to make
rules and regulations does not depend for its
existence solely upon express grant. The
authority of an administrative agency to adopt
reasonable rules and regulations, which are
deemed necessary to the due and efficient exer-
cise of the powers expressly granted, cannot
be questioned. This authority is implied from
the power granted."

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Missouri follows the general rule as shown by State ex rel. Springfield Warehouse & Transfer Company v. Public Service Commission, (Mo. App.) 225 SW2d 792, at 794:

" . . . the adoption of such a rule by respondent can only be legally authorized upon the grounds that the Legislature has directly, or by necessary or reasonable implication, authorized the same. Respondent has no power except that granted by its creator." [Emphasis ours]

The State Board of Cosmetology is expressly granted the power to make rules by: Section 329.100, RSMo, regarding the conduct of examinations; Section 329.210, RSMo, to prescribe sanitary rules; and, Section 329.230, RSMo, governing the board's internal workings. In addition, the board has the implied power to make reasonable rules and regulations necessary to efficiently exercise the powers expressly granted to the board by Chapter 329, RSMo.

Any reasonable rule or regulation adopted by the board which is within the authority granted the board either expressly or by necessary implication shall have the effect of law after the rule or regulation has been filed with the Secretary of State for the notice period required by Section 536.020, RSMo, 1959.

Violation of such rule or regulation is cause for which the board has the power to refuse to issue a certificate to an applicant or to revoke or suspend an existing certificate under Section 329.140(7), RSMo 1959.

With the general principle in mind that board rules and regulations must be (a) within the power granted the board, expressly or by necessary implication, and (b) reasonable, we come now to the application of this principle to the specific matters which were raised in your letters.

The first question you ask may be restated as follows:

- (1) Does the Board of Cosmetology have the power to prescribe the course of study in licensed schools by rule or regulation?

Such a rule will be valid if it is reasonably designed to carry out the provisions of Chapter 329, RSMo, and more specifically, Section 329.040(2), RSMo, which sets the minimum standards of the course of study, which the school must be able to supply students for the classified occupation of hairdresser, cosmetologist and manicurist.

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This section specifies a minimum number of hours that must be devoted to instruction of each student in order to attain the skills required of a qualified practitioner set out in Section 329.020, RSMo. Courses must be given in the subjects listed in such section. In order to assure the proper training of students in schools in such subjects, the board has the power to specify the minimum length of time that must be devoted to each subject in order for the student to become a reasonably proficient licensee. These regulations would be authorized in order to carry out the purpose of the law to afford reasonable protection to the public at the hands of a licensee.

(2) Does the Board of Cosmetology have the power to prescribe by rule the minimum amount of floor space for a person to obtain and keep a school license?

This question is closely related to the previous question. The minimum floor space requirements prescribed by board rule must be reasonable. In determining reasonableness, the board may consider its power to prescribe sanitary requirements under Section 329.210, RSMo, and its power to require a course of study in schools under Section 329.040, RSMo.

It is not unreasonable for the board to require a school to have enough area to properly teach its students theory and practice under conditions safeguarding the health of students and the public. Therefore, a rule prescribing minimum floor space to obtain or keep a license is authorized.

(3) Does the Board of Cosmetology have the power to require by rule or regulation that the advertisement of prices of student work by schools specify that such work is to be done by students?

Advertising by schools of prices of work to be done by students without specifying that the work is to be done by students would be deceptive advertising. A student is not a qualified operator and the public has a right to know that the work for which the public is to expend money is to be done by a student rather than an expert.

The board is authorized by Section 329.140, RSMo, to make such a rule. The statute gives the board power to refuse to issue, revoke or suspend a license of a school for:

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"(8) Advertising by means of any false or deceptive statements knowingly made."

Since the board is given the power to refuse, revoke or suspend a school license for such advertising, it necessarily follows that the board may regulate such false or deceptive advertising by schools in order to carry out the purpose of the law.

(4) Does the Board of Cosmetology have the power to prescribe by rule a reasonable examination to determine the ability of applicants for school license?

Applicants for registration under Chapter 329, RSMo, are required to pass an examination to the satisfaction of the board by Section 329.050, RSMo, which provides in part:

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

(3) They shall have passed an examination to the satisfaction of the examining board."

This statute does not specifically limit these qualifications to only those persons applying for a license to practice the classified occupations of cosmetology, hairdressing, manicuring. The statute includes all applicants for registration.

The requirement of an examination for applicants for school registration would be in the public interest if the examination is designed to determine the ability of a person applying to be licensed as a school. Therefore, the board is empowered to require an examination for applicants for a certificate of registration for a school to teach any of the classified occupations. The examination required by the board must be calculated to determine the ability of a person applying for a license to properly operate a licensed school. Otherwise it would be unreasonable.

(5) May the Board of Cosmetology prohibit the use of brush curlers in licensed schools and shops?

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Under Section 329.210, RSMo, the board has the power to issue such reasonable sanitary rules as it deems necessary. If it is impracticable to use brush curlers in a sanitary manner, then a regulation prohibiting their use would be authorized by this section as promoting sanitation. On the other hand, if it were practicable to use such brush curlers in a sanitary manner, then a regulation prohibiting their use would be unreasonable since it would be outlawing the use of an article not inherently un-sanitary and would be infringing on property rights unnecessarily. If such be the case, a regulation requiring brush curlers to be kept in a sanitary condition would be reasonable and serve the same end as prohibition.

(6) Does the Board of Cosmetology have the power to prohibit by rule a school owner from having a shop?

The board is not authorized to make such a rule. However, the board may proceed in this regard to require by rule that a shop and a school be kept separate and apart.

There is no prohibition in Chapter 329, RSMo, on the number or types of licenses a person may obtain. The chapter does distinguish between a school and a shop. There are different licenses for schools than there are for shops. Therefore, it follows that a shop and a school are not the same.

Nor may a school and a shop be in the same part of the same building but must be separate and apart because Section 329.010, RSMo, defines a shop as "that part of any building wherein or whereupon any of the classified occupations are practiced." The classified occupations are not practiced in a school. They are taught there.

Further, although Section 329.040(3), RSMo, permits a shop owner to teach apprentices in his shop without being required to obtain a school license, such shop owner may not hold himself out as a school. If he holds himself out as a school he must register as a school.

Therefore, although the same person may be licensed to have a school and a shop, a school may not be in a shop, and a shop may not be in a school; they must be kept separate and apart.

(7) May the Board of Cosmetology require by rule that a shop owner, who teaches an apprentice, be a licensed instructor?

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This question was answered in the negative in an opinion of this office under date of October 5, 1959, addressed to Mrs. Jakaline McBrayer, which is enclosed. This office continues to be of the same opinion.

CONCLUSION

It is the opinion of this office that the Board of Cosmetology has the power to issue reasonable rules and regulations within the power granted the board expressly or by necessary implication.

More specifically, the board may issue reasonable regulations: (1) prescribing the course of study in a licensed school; (2) prescribing the minimum floor space for obtaining and keeping a school license; (3) requiring advertising by schools to be non-deceptive so that work done by students must be advertised as such; (4) prescribing a reasonable examination for applicants for school licenses; (5) prohibiting the use of brush curlers in licensed schools and shops if it is impracticable to keep them sanitary or making reasonable sanitary requirements.

The board has not been authorized by statute to make regulations: (6) prohibiting a licensed school owner from having a licensed shop; (7) requiring a shop owner who teaches an apprentice to be a licensed instructor.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Jeremiah D. Finnegan.

Yours very truly,


THOMAS F. EAGLETON
Attorney General

Enc.