

COSMETOLOGY BOARD:
BOARD OF COSMETOLOGY:

Use of brush rollers brought into a cosmetology shop or school by a patron to be used solely and exclusively upon the head of such patron is not prohibited.

OPINION NO. 12 (1965)
OPINION NO. 304 (1964)

February 4, 1965

Honorable Carroll M. Blackwell
Prosecuting Attorney
Callaway County
Fulton, Missouri



Dear Mr. Blackwell:

The request for an opinion by your predecessor in office poses a question concerning the regulation of the State Board of Cosmetology prohibiting the use of brush rollers in shops and schools of cosmetology. The question reads as follows:

"I would like to know whether, in view of this regulation, a woman may purchase her own brush rollers, take them to a beauty shop, have them used upon her hair, and take them home, repeating this process from time to time, the rollers being used by nobody but her or upon her."

The regulation referred to was filed by the State Board of Cosmetology on June 2, 1964, and went into effect on June 12, 1964. It reads as follows:

"The use of brush rollers and brush curlers is prohibited in shops and schools of cosmetology."

This regulation was adopted shortly after an opinion of this office concluded that brush rollers could be prohibited if it were impracticable to keep them sanitary.

The reasoning given in such Opinion of the Attorney General, No. 58, May 15, 1964 (which is enclosed), at page 5, is as follows:

"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 unsanitary 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." (Emphasis supplied.)

Since this is a rule relating to health and sanitation, it must necessarily be designed to promote sanitation and be reasonable. It is obvious that the purpose of the rule is to prevent spreading contagious and infectious diseases through the use of the same brush rollers on more than one customer.

The use of brush rollers by an operator that were brought by the patron to be used solely and exclusively on the head of the one who brought them is not within the purview of the rule. Brush rollers used in such manner would not spread contagious or infectious diseases since they are used only on the patron who brought them into the school or shop.

Administrative rules, like statutes, are presumed to be reasonable. *Warning v. Thompson, Mo., 249 S.W. 2d 335.* To interpret the rule to include brush rollers brought in the shop by a patron to be used solely and exclusively on that patron's head would be to give the rule an unreasonable interpretation. Therefore, the rule should not be interpreted to give such a result. The use of brush rollers in such manner is not prohibited.

CONCLUSION

Therefore, it is the opinion of this office, that the use of brush rollers brought into a cosmetology shop or school by a patron to be used solely and exclusively upon the head of such patron is not prohibited.

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

Very truly yours,


NORMAN H. ANDERSON