BARBERS:
BARBER BOARD:
LICENSES:

We are of the opinion that the person mentioned in your opinion request is within the meaning of Section 328.010, RSMo 1949, and, therefore, required to obtain a license from the State Barber Board pursuant to Chapter 328.

December 30, 1959

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Honorable Don E. Burrell
Prosecuting Attorney
Greene County
Springfield, Missouri

Dear Mr. Burrell:

We are in receipt of your recent letter in which you asked us for our official opinion on the following questions:

> "1. If a college furnishes a room and the equipment for shaving and cutting the hair of its students only, and permits one of its students to shave and cut the hair of fellow students only, for pay, is such hair cutting student a 'Barber' within the meaning of Section 328.010, R.S.Mo. 1949?
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> "2. If, in addition to shaving and cutting the hair of fellow students, such student also shaves and cuts the hair of faculty members of the college as well as that of its students, for pay, is he a 'Barber' within the meaning of Section 328.010, Supra?"

Section 328.010, RSMo 1949, as amended, defines the term "barber" as it is used in Chapter 328 and reads as follows:

> "Any person who is engaged in the capacity so as to shave the beard or cut and dress the hair for the general public, shall be construed as practicing the occupation of barber, and the said barber or barbers shall be required to fulfill all requirements within the meaning of this chapter."

And Section 328.020, RSMo 1949, provides that:

> "It shall be unlawful for any person to follow the occupation of a barber in this state, unless he shall have first obtained a certificate of registration, as provided in this chapter."

Your question, rephrased, simply asks if the person referred to above is cutting the hair of the general public and thus within the meaning of Sections 328.010 and 328.020, supra.

The term "public" is used as a noun in Section 328.010, supra, and is defined in 73 C.J.S., pages 275-276, as follows:

> "It has been said that the public exists in thought as an unexclusive group of persons, natural and artificial, and includes all who are subject to the state's jurisdiction. The word 'public' is inclusive of all the people and inhabitants, and is not exclusive or limited to a part or portion of the people, and in its enlarged sense takes in the entire community, the whole body politic. In its broadest meaning, the term 'public' distinguishes the populace at large from groups of individual members of the public segregated because of some common interest or characteristic, yet it has been said that such a distinction is inadequate for practical purposes.
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> "The word 'public,' however, does not mean everybody all the time; it does not mean all of the people in the state, or in any county or town. It does not mean all the people, or most of the people, or very many of the people of a place, but so many of them as contradistinguishes them from a few. It designates individuals in general without restriction or selection."

In State ex rel. Anderson et al. v. Witthaus, 340 Mo. 1004, 102 S.W.(2d) 99, 102, the Court was considering in a prohibition action the question of whether or not plaintiff was a common carrier within the meaning of the bus and truck act. The Court discussed the term "public" and said:

> "[2-5] * * * The essential feature of a public use is that it is not confined to privileged individuals, but is open to the indefinite public. It is this indefinite or

> unrestricted quality that gives it its public character. White v. Smith, 189 Pa. 222, 42 A. 125, 43 L.R.A. 498. 'It follows that the use must be so extensive as to imply an offer to serve all of the public, or that there be other circumstances from which it may be reasonably inferred that the carrier was undertaking to serve all to the limit of his capacity. One, however, does not become a public carrier because he is engaged exclusively in transporting persons or property or because the person or persons whom he serves take all his facilities. The test is whether he has invited the trade of the public.' Klawansky v. Public Service Commission, 123 Pa. Super. 375, 187 A. 248, 251. But, 'the public does not mean everybody all the time.' Spontak v. Public Service Commission, 73 Pa. Super. 219, loc. cit. 221 citing Peck v. Tribune Co., 214 U.S. 185, 29 S. Ct. 554, 53 L. Ed. 960, 16 Ann. Cas. 1075. * * * "

Our Supreme Court thus recognizes the principle that the term "public" does not mean everybody all the time or all the people in the state or city but so many of them as contradistinguished from a few.

In this case, it is obvious that the students and faculty do not constitute "all the public" at Springfield; however, they do constitute a segment of the "general public." The fact that they are a restricted group, i.e., students and faculty of said college, does not, we think, make them any less a part of the general public.

We also direct your attention to the case of Ex Parte Lucas, Mo.Sup., 61 S.W. 218, 222, where our Court discussed the purpose and reason behind the enactment of Chapter 328, and ruled as follows:

> " * * * * *** Is the occupation of a barber a calling or trade involving to any degree the public health and public good? If it is, the law must be sustained. We hold that it is, and that the health of the citizen, and protection from diseases spread from barber shops

> conducted by unclean and incompetent barbers, fully justify the law. It is a fact of which we must take notice that the people of today come in contact with, and engage the services of, those following the occupations of barber, as much as, if not more than, any other occupation or profession. We must take notice of the fact, too, that the interests of the public health require and demand that persons following that occupation be reasonably familiar with, and favorably inclined towards, ordinary rules of cleanliness; that diseases of the face and skin are spread from barber shops, caused, no doubt, by uncleanliness or the incompetency of barbers. We must take notice of the fact that to attain proficiency and competency as a barber requires training, study, and experience,--training in the art, and study and experience in the management and conduct of the calling. A design and purpose to protect the public from injurious results likely to follow from such conditions is the foundation of statutes like this. And, as we must take judicial notice of the foregoing facts, the foundation for this law is apparent. And it may be said, further, that there is as much reason for a law of this kind as to barbers as there is for such a law as to dentists, pharmacists, lawyers, and plumbers. It is enacted in the interests of the public health and welfare, and we sustain it.'"

The barber law, then, is for the specific purpose of protecting the public from uncleanliness, incompetency, and spread of disease by the practice of barbering in this State.

To permit the person in question to cut the hair of a segment of the general public without a license simply because he does not offer his services to all would be ignoring the very purpose for which this law was enacted.

We do not believe that the legislature intended Section 328.010 to mean one is not a barber within the meaning of said statute unless he holds himself out to all the public. On the contrary, we are of the opinion that they intended to include and

regulate such a person and activity as mentioned in your opinion request to us.

CONCLUSION

We are of the opinion that the person mentioned in your opinion request is within the meaning of Section 328.010, supra, and, therefore, required to obtain a license from the State Barber Board, pursuant to Chapter 328.

The foregoing opinion, which I hereby approve, was prepared by my assistant, J. Burleigh Arnold.

Yours very truly,

John M. Dalton
Attorney General

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