

BARBERING:

It is the duty of the State Board of Barber's Examiners to proceed against all persons violating provisions of Chapter 103, R. S. Mo. 1929.

10-8
October 8, 1935.

Hon. Richard Chamier
Prosecuting Attorney
Randolph County
Moberly, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion which reads as follows:

"A barber residing in Randolph County had a hearing before the State Barber's Board at a meeting in Moberly, Missouri, and his license was revoked. He is now practicing the occupation of barbering in this County without a license or permit. The State Barber Board called my attention to Section 13534, which makes it a violation to so practice without a permit or license.

"A portion of this section is as follows:

"'or for the violation of any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, AND THE BOARD SHALL PROCEED AGAINST ALL SUCH PERSONS****prosecutions under this chapter shall be begun and carried on in the same manner as other prosecutions for misdemeanors in this State.'

"I would appreciate your advice on the procedure necessary on the part of the Board to comply with that clause cited above which has been capitalized. I am wondering if their action in signing a

complaint before a Justice of the Peace in this County would be sufficient to satisfy the statement that the Board shall proceed against all such persons."

Your attention is directed to Section 13534, R. S. Mo. 1929, relating to the Board of Barber Examiners proceeding against persons practicing the occupation of barbering without first having procured a permit. Said section reads as follows:

"Any person practicing the occupation of barber without having obtained a certificate of registration or permit as provided in this chapter, or willfully employing a barber who has not such certificate of permit managing or conducting a barber school or college, without first securing a permit from such board, or falsely pretending to be qualified to practice as a barber or instructor or teacher of such occupation under this chapter, or failing to keep the certificate, card or permit mentioned in this chapter properly displayed or for any extortion or overcharge practiced, and any barber college, firm, corporation or person operating or conducting a barber college without first having secured the permit provided for by this chapter, or failing to comply with such sanitary rules as the board, in conjunction with the state board of health, prescribes, or for the violation of any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and the board shall proceed against all such persons, and upon conviction thereof they shall be punished by a fine not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than ninety days. Prosecutions under this chapter shall be begun and carried on in the same manner as other prosecutions for misdemeanors in this state."

In construing the above statute, it is obvious that it is the duty of the board of barber examiners to proceed

against all such persons as may be violating the provisions of Chapter 103, of R. S. Mo. 1929, relating to barbering. This statute makes it mandatory upon the board to proceed, and that the prosecutions are to be begun and carried on as other prosecutions for misdemeanors in this State. Your attention is directed to the case of Ex Parte Brown, 297 S. W. 2d 447, wherein the Court in speaking of the interpretation of a statute said:

***** When a fair interpretation of a statute which directs acts or proceedings to be done in a certain way shows that the Legislature intended a compliance with such provision to be essential to the validity of the act or proceeding, then such statute is mandatory. *****

Your attention is further directed to Sections 3414, 3415, 3501 and 3502 of R. S. Mo. 1929, relating to the prosecution of misdemeanors in this State. You will find, from a careful reading of these sections that a complaint made under oath and delivered to the Prosecuting Attorney by the Board of Barber Examiners will be sufficient and will satisfy the intent of the Legislature as expressed in Section 13534, supra.

CONCLUSION.

It is the opinion of this department that it is the duty of the Board of Barber Examiners to make a complaint under oath of any alleged violations of Chapter 103, R. S. Mo. 1929, and deliver the same to the Prosecuting Attorney to effectuate the meaning of the statute making it mandatory upon the board to proceed.

Respectfully submitted,

APPROVED:

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