

STATE BOARD OF COSMETOLOGY: 1. Fees collected by Board payable to Director of Revenue;
2. No prohibition against employee of Board discharging duties of an inspector and secretary at the same time if, in Board's discretion, action is conducive to efficient operation.

3. An officer of this state may authorize an increase in salary to an employee different from that listed in the official Manual.
4. Board may not grant bonuses to employees.
5. Employees of Board may travel beyond State and receive reimbursements therefor, if such expense is incurred in discharge of official duties, in matter in which government has an interest, and within appropriation provided for that purpose.

June 14, 1955

Miss Edna Marie Pray
President, Missouri State
Board of Cosmetology
420 West 11th Street
Kansas City, Missouri

Dear Miss Pray:

Reference is made to your request for an official opinion which request reads in part as follows:

"Should the checks and money orders sent to Jefferson City from Shop owners, School owners, operators, and instructors be made payable, to, Director of Revenue-Jefferson City, or made payable to - -Division of Cosmetology - Jefferson City, Mo.

"Would like an official opinion, if any of our office employees are entitled to hold two positions in our office to wit - First, as our Secretary and also as Inspector calling on all the Schools in the State of Missouri, with unlimited expense account. Thus making it necessary to hire another girl in the office.

"I wish to know, Can The Board Members, legally raise the office secretary's salary of three hundred and seventy dollars per month, which is the listing in 'The Blue Book.' The Board also wishes to know if They can allow Bonus to Office employees?

"The Board wishes an official opinion, as to whether or not the Secretary of our office can go to such places as Miami, Florida, Chicago, New York, Kentucky and California, etc. with all expenses paid by The State of Mo."

Your first inquiry is whether examination and annual

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registration fees as imposed by Chapter 329, RSMo 1949, should be made payable to the "Division of Cosmetology" or to the "Director of Revenue, Jefferson City."

Chapter 320, RSMo 1949, imposes certain examination and annual registration fees upon persons desiring to engage in the occupation of hairdresser, cosmetologist or manicurist or who conduct a hair-dressing, cosmetologist or manicurist establishment, shop or school. Section 329.060, relating specifically to the examination fees required of an applicant for registration provides as follows:

"1. Every person desiring to practice any of the occupations provided for in this chapter shall file with the state board of cosmetology a written application under oath on a form prescribed and supplied by said board and shall submit proof of the required age, educational qualifications and of good moral character together with a fee of ten dollars payable to the director of revenue.

"2. Upon the filing of such application and the payment of the examination fee of ten dollars, the state board of cosmetology may issue to said applicant a temporary certificate of registration for a definite period of time but not beyond the next regular examination of applicants for the practicing of the occupations in this chapter provided; and said person receiving said temporary certificate shall be entitled to practice the occupations herein designated until the expiration of said temporary certificate, and after the expiration of said temporary certificate, any person continuing to practice the business as herein defined shall be guilty of a misdemeanor and punished as in this chapter provided."

Section 329.240, RSMo 1949, relating to all fees provided for in Chapter 329 provides as follows:

"All fees provided for in this chapter, shall be payable to the director of revenue who shall keep a record of the account showing the total payments received and shall immediately thereafter deposit the same with the state treasurer in a fund to be known as the 'State Board of Cosmetology Fund' which is hereby created and established. All the salaries and expenses for the operation of said board shall be appropriated and paid from said fund." (Emphasis ours.)

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Under the two foregoing quoted statutory provisions, we believe it is quite apparent that all fees collected should be made payable to the Director of Revenue rather than to the Board of Cosmetology.

You next inquire whether a secretary to the Board, which we understand to mean office secretary rather than the Secretary to the Board, may also hold the position and discharge the duties of an inspector, with an unlimited expense account.

We know of no rule of law which would prohibit a public employee as distinguished from an officer from discharging the duties of several positions, nor do we find any statutory prohibition against the same person acting as office secretary for the State Board of Cosmetology and as an inspector for said Board. We direct your attention to Section 329.230, RSMo 1949 relating to the authority of the Board to employ office personnel and inspectors. Said section provides as follows:

"The board shall elect one of its members president, one vice-president and one secretary, and shall have power to employ and remove such office employees and inspectors as may be necessary for the efficient operation of the board, within the limitations of its appropriation, and to formulate rules and regulations governing its actions; provided, however, the board shall create no expense exceeding the sum received from time to time as fees as provided by law."

It is noted that the Board is granted the authority to employ and remove such office employees and inspectors as may be necessary for the efficient operation of the Board, subject to the qualification that such employment be within the appropriations for such purpose. In view of this provision we are of the opinion that it is within the discretion of the Board as to whether a person shall be employed in a dual capacity, such discretion to be governed by the efficiency in operations promoted by the Board's action. The employees appointed as authorized by Section 329.230 would of course be subject to the control and supervision of the Board.

You next inquire whether the Board can increase an employee's salary above that listed in the "Blue Book" and whether the Board can grant bonuses to office employees. Section 11.030, relating to the publishing of salaries of state employees in the official manual (the Blue Book) provides as follows:

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"There shall be published in said manual the name, salary and post office address, and previous occupation, including street and number, of every officer and employee, of this state, and it shall be unlawful for any officer of this state to pay or authorize the payment of a salary to any appointee or employee unless he shall first file with the secretary of state, for publication in the manual, the name, salary, post office address and previous occupation of such employee."

This section was first enacted in Laws 1923, page 294, Section 2, and did not impose the requirement that the information filed with the Secretary of State should include the salary of the officer or employee. The Amendatory Act of 1941 imposed a requirement that the salary of said officer or employee should also be included in the information filed.

It is a cardinal rule of statutory construction that effect should be given to the intention of the Legislature by adopting a construction which will harmonize the context and promote the apparent objects of the Legislature. State v. Ball, 171 S.W. 2d. 787.

Section 11.020, RSMo 1949, provides that the Secretary of State shall biennially as soon as practicable after the organization of each General Assembly prepare and publish a Missouri Manual.

Section 11.030, RSMo 1949, provides that there shall be published in said Manual the name, salary, post office address, including street, number and previous occupation of every officer and employee of the state. In view of the purpose of the filing of the aforementioned information (that is, publication) we do not think that it is unlawful to increase the salary of an employee who has once been listed in the "Blue Book" prior to filing such information with the Secretary of State, provided however, that such information should be filed with the Secretary of State at such time as he may direct prior to the next publication of said Manual.

In regard to the payment of bonuses to employees we direct your attention to Section 39 of Article III of the Constitution of Missouri which provides, in part, as follows:

"The general assembly shall not have power:

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"To grant or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered or a contract has been entered into and performed in whole or in part;"

The Constitutional provision prohibits the General Assembly from granting extra compensation, fees or allowances to a public officer, agent or servant after service has been rendered. Likewise, a government agency which derives its power and authority from the Constitution and laws of this state would be prohibited from granting extra compensation in the form of bonuses to public officers or servants after the service has been rendered.

Lastly, you inquire as to whether the office secretary to the State Board of Cosmetology is authorized to travel outside the state, the expenses of such travel to be borne by the state of Missouri. Section 33.090, authorizes and empowers the state Comptroller to promulgate rules and regulations governing the incurring and payment of reasonable and necessary travel and subsistence expenses actually incurred in behalf of the state. Pursuant to such authority the state Comptroller has adopted the following rule currently on file:

"Rule 2. Traveling expenses which will be reimbursed are confined to those expenses essential to the transacting of official business of the State of Missouri."

We also note the following rule stated in 67 C.J.S. Officers, Section 91, page 329:

"* * *However, in order to justify indemnification of a public officer for an expense incurred in the discharge of his official duties, the officer must have acted in good faith, in the discharge of a duty imposed or authorized by law, and in a matter in which the government has an interest."

No applicable rule of law or statutory provision or regulation is found which would limit the incurring of expenses for travel and subsistence to travel within the state and therefore we must conclude that a public official or employee may be reimbursed for expenses reasonably incurred in travel beyond the state in the discharge of official duties and in matters which the government has an interest. What has been said in relation to travel beyond the state would likewise be applicable to an employee traveling

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within the state in the discharge of official duties.

CONCLUSION

Therefore, it is the opinion of the office that:

1. All fees collected by the State Board of Cosmetology should be made payable to the Director of Revenue;
2. There is no prohibition against an employee of the State Board of Cosmetology discharging the duties of an inspector and secretary at one and the same time if, in the Board's discretion, such action is conducive to efficient operation;
3. An officer of this state may authorize an increase in salary to an employee different from that listed in the official manual.
4. The State Board of Cosmetology may not grant bonuses to employees;
5. Employees of the Board may travel beyond the state and receive reimbursement therefor, if such expense is incurred in the discharge of official duties, in a matter in which the government has an interest, and within the appropriation provided for that purpose.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General

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