

**Cosmetology — Licenses — Inspections — Prosecutions —
Revocations of Licenses—Powers of Boards.**

The cosmetology act is indefinite as to requiring shop licenses. The necessity of procuring a practitioner's license is not dispensed with merely because practitioner does not maintain established place of business. A person should not be licensed to practice unless he is qualified to practice all the subjects embraced within the definition of "cosmetology." Advertising alone does not constitute the practice of cosmetology and evidence of actually engaging in the practice would be necessary to warrant prosecution. '

The law makes no provision for special teachers' licenses. Complaints for practising without a license should be submitted to the county attorney. Complaints regarding the violation of the rules and requirements may be heard by the board upon order to show cause, and, if sustained, licenses may be revoked. Inspector has no authority to seize articles for evidence. Licensee refusing admission to inspector is subject to having

his license revoked by the board after due hearings. The board should collect application fee of \$10.00 and an additional \$5.00 license fee if license is issued. Board cannot charge any fees except those mentioned in statutes regardless of whether or not license expires before renewal. Persons engaged in the practice any time before the act took effect who have not at the time of this opinion secured their licenses cannot be licensed without examination.

Mrs. Reba House, October 21, 1930.
Secretary-Treasurer,
Montana State Examining Board of Beauty Culturists,
Helena, Montana.

My dear Mrs. House:

You have requested my opinion on the following questions:

"1. Can the board issue a license for the shop owner as the law reads: 'No place shall be used or maintained for the practice or teaching of cosmetology for compensation except under a license'? If so, what would be the license fee?

"2. Can an operator go from one home to another to do work for compensation?

"3. Can we classify our licenses as we do now? We have thirteen branches incorporated as cosmetology and have permanent waving, haircutting and manicuring as special courses. We let it be optional with the operator whether or not she takes the special courses, but have ruled that she or he must spend extra time and preparation as well as take an examination before practicing. Our law reads: 'Any and all work generally included in term "hairdressing".' It seems to me that if they get a license for \$5.00 they can do anything pertaining to beauty work as they care to take it up.

"4. Can an operator put a sign in a window: 'Marcelling', before she applies for registration, accompanied by health certificate and fees?

"5. Should a teacher hold a regular license or should the license have a special mark to distinguish it from just an operator, and what is the fee? The last few lines of Section 3 read: 'providing due application for registration shall be made and the required fee paid by such person under such rules as the state board may provide'. Do we set the fee?

"6. Is not this board the court for the first hearing and what would be the proper procedure in case of violation of our rules?

"7. Could our inspector pick up evidence such as towels and instruments to be used at hearings and then return same?

What should an inspector do when refused admittance to the shop?

"8. Can we get \$15.00 from operators coming in from another state; \$10.00 at time of registration and \$5.00 on the issuance of the license? Do we still have to admit Montana operators without examination who were working in Montana July 1, 1929, but never applied for a license before? Could we make a rule that anyone failing to apply 60 or 90 days after law went into effect would be compelled to take examination?

"9. Can our rule as follows, hold: 'If you fail to pay renewal fee on December 31st, each year, your license automatically expires and can only be reinstated by paying the restoration fee of \$5.00 plus the regular fee of \$5.00?'"

In answer to your first question will say that while the law provides that "no place shall be used or maintained for the practice or teaching of cosmetology for compensation except under a license," no provision whatever is made for the granting of a shop license nor is any license fee fixed. It would appear possible that the intent of the act was to require a shop license so as to give the board authority to control the sanitary conditions of the shops, but in view of the fact that provision is made only for issuing a license to a qualified practitioner or teacher or a school, it is impossible to arrive with any degree of certainty as to the intent of the legislature and because of this ambiguity any attempted interpretation of this part of the act by this office would be of little value.

It is therefore suggested that the legislature, which will soon convene, be asked to amend the act so as to more clearly express the intent thereof in this regard.

In answer to your second question, Section 1 of said act provides that "no person shall practice or teach cosmetology * * * without first obtaining a license"; hence, the mere fact that a person does not maintain an established place of business does not exempt him from obtaining a license.

In answer to your third question, will say that I agree with you that the payment of \$5.00 and the obtaining of a license entitles the holder to engage in the general practice of cosmetology. A person should not be licensed unless he is qualified to practice generally all the subjects embraced within the definition of "cosmetology."

In answer to your fourth question, will say that the law simply prohibits the practice of cosmetology without a license and does not prohibit advertising; therefore, evidence of actually engaging in the practice would be necessary before a conviction for practicing without a license could be obtained.

In answer to your fifth question, I find no provision for a special teacher's license, and the state board is not given the authority to fix a license fee but is simply authorized to make the rules under which a license shall be issued and these rules cannot be in conflict with the act itself.

In answer to your sixth question, the board is to hear all complaints as to violations of its rules and regulations as provided by Section 2 of the act, but in the case of a complaint for practicing without a license this pertains to a violation of the act itself and the complaint should be filed with the county attorney. As to the procedure to be followed by the board in matters wherein it has jurisdiction to hear the complaints will say that the person complained against should simply be cited to appear before the board and show cause why his or her license should not be revoked in answer to the complaint.

The answer to your seventh question is that an inspector has no authority to pick up articles such as towels, et cetera, to be used as evidence but should simply submit a report to the board of his or her findings. If the inspector is refused admission the matter should be reported to the board and the guilty person cited to appear and show cause why his or her license should not be revoked as the right of the inspector to enter a shop is one granted under the act itself and the refusal of an operator to allow this would be sufficient grounds to justify the revocation of a license.

In answer to your eighth question, Section 15 of the act provides:

“Each applicant for examination and applicant for admission without examination by virtue of a license issued in another jurisdiction, shall pay at the time of such application a fee of Ten Dollars (\$10.00).”

This is not a license fee but is a fee to be paid for filing the application for examination or admission, and is not returned to the applicant even should such application be denied. Hence, you are entitled to charge both this application fee and the license fee when a license is issued on the application. As to the admission of Montana operators without examination the law provides that any person practicing or teaching in this State preceding the effective date of the act, to-wit, July 1, 1929, can secure a license without examination. No doubt contemplating that those who were actively engaged in the practice would be fully competent to continue in the practice thereof the word “preceding” was used in the statute for the purpose of barring any who had not been active or who had been out of the practice for some time and by reason thereof had become inefficient.

Following the intent of the act it would appear that any operator in Montana who had not made application for a license up to the present date would either have not been engaged in the practice for some time prior to his making application or else had been guilty of practicing without a license and either grounds would, in my opinion, be sufficient to justify the board in refusing to grant a license without examination and, of course, in the last instance if the application showed that the applicant had been practicing without a license would justify a prosecution.

In answer to your ninth question, will say that the act does not provide for a restoration fee after a license has expired and your board

can only make special rules for the renewal of expired licenses, but has no authority to fix additional fees but can only collect those specified by the statute.

Very truly yours,

L. A. FOOT,
Attorney General.