

No. 326

BEAUTY CULTURISTS, Montana State Examining Board of—HAIR DRESSERS—PRICE FIXING AGREEMENTS

Held: Montana State Examining Board of Beauty Culturists has no power under Chapter 80, Laws of 1941, to set minimum charges for licensed apprentices in beauty shops, but operators may by agreement in a particular area set such minimum charges subject to approval by the Board.

December 31, 1941.

Honorable Jack Haytin, President
Montana State Examining Board of
Beauty Culturists
Helena, Montana

Dear Mr. Haytin:

You have requested an opinion from this office on the following question:

May the Montana State Examining Board of Beauty Culturists promulgate a ruling that charges made for work done by licensed apprentices shall not be less than fifty per cent of the established minimum prices in the particular area?

I must answer your question in the negative.

While the Board has, by implication, such powers as are necessary for due and efficient exercise of those expressly granted (*Guillot v. State Highway Commission*, 102 Mont. 149, 56 Pac. (2nd) 1072), no powers will be implied other than those necessary for effective exercise of powers and duties expressly conferred.

State ex rel. Dragstedt v. State Board of Education, 103 Mont. 336, 62 Pac. (2nd) 330.

With this principle in mind, let us examine the powers expressly conferred by statute on your Board with reference to price fixing.

All of the state legislation relating to price fixing in the beauty culturists' profession is contained in Chapter 80, Laws of 1941.

Section 2 of Chapter 80, Laws of 1941, amends Section 3228.6 of the Revised Codes of Montana, 1935, and provides *inter alia*:

"The Montana state examining board of beauty culturists shall have power to approve price agreements among licensed practitioners and students in beauty schools, under this act, whereby minimum prices for hairdressing and beauty culture are established by explicit written agreement signed and executed by at least seventy-five (75%) per cent of the practitioners in any county within the State of Montana, and submitted to the board by such signing group over the signatures of all thereof; providing also that beauty schools shall charge for students' work, not less than fifty (50%) per cent of the established minimum prices, as determined and approved by seventy-five (75%) per cent of the practitioners in that particular area. Upon receipt of such price agreements, so executed, the board shall proceed to investigate the reasons therefor and the necessity of justification for such agreement with or without public hearing thereon, and in the event that the board, in its discretion, concludes that such price agreement is just and under the conditions obtaining for the particular territory involved, will best protect the public health and safety by affording a sufficient minimum price for hairdressing and beauty culture to enable the practitioners to furnish modern and healthful

services, and appliances to minimize danger to the public health, the board may approve such agreements for the term proposed therefor or for such shorter term as the board may deem proper. . . .

"The price agreement as proposed, or as modified by the board, shall be put into effect by official order of the board, which shall plainly state the minimum price for all work usually performed in a beauty shop or parlor within the county, city or town in which the price agreement has been signed, and for which it is effective. If the board, at the time of the receipt of the proposal, or at any time thereafter, including any time subsequent to its order, either upon petition of two thirds (2/3) of the signatories to said price agreement, or upon the board's initial motion finds that the minimum prices so fixed by its order are insufficient or improperly adjusted, to provide healthful services to the public and keep the shops and parlors in a safe, sanitary and attractive condition, then the board shall have authority to modify said minimum prices by prescribing such increases, adjustments or decreases, if necessary, best calculated to realize said objectives.

"The state board shall prescribe reasonable rules for the conduct of its business and for the qualification, examination and registration of applicants to practice or teach cosmetology, and for applicants for manager-operator licenses, and for the regulation and instruction of apprentices and students, and for the conduct of schools of cosmetology for apprentices and students, and generally for the conduct of the persons, firms or corporations affected by this act, within the limits of the act." (Emphasis mine.)

While it appears—from the first paragraph above quoted—the power of the Board concerning price agreements is that of approval, the emphasized portion of the second paragraph quoted discloses a price fixing power in the Board where an agreement has been filed.

That being true, it is obvious that in any case the Board's price fixing power can operate only with reference to a particular price agreement in an area. No express authority is delegated to the Board to fix minimum prices for operators, students or apprentices by a broad, state-wide rule even though such a minimum is based upon minimum prices contained in local price agreements. Nor is any implied authority necessarily granted. On the contrary, the price fixing power of the Board operates only because of the recited necessity by statute of providing healthful service to the public and keeping shops and parlors in a safe, sanitary and attractive condition. Price fixing—under the power granted—presupposes findings of necessity in regard to the particular agreement under consideration.

A similar result can, in my opinion, be attained by the Board acting with respect to each individual agreement if conditions warrant it in the particular area. From a reading of Sections 3228.1 to 3228.18, inclusive, of the Revised Codes of Montana, 1935, it is readily apparent students in beauty schools and apprentices under license are treated as separate and distinct classes. The Legislature has declared in Section 3228.6, as amended by Chapter 80, Laws of 1941, that "providing also that beauty schools shall charge for students' work, not less than fifty (50%) per cent of the established minimum prices, as determined and approved by seventy-five (75%) per cent of the practitioners in that particular area." Apprentices, being a separate class, are not included in this proviso. Under the same section, the agreements must be signed by at least seventy-five per cent of the practitioners in the area. I construe the word "practitioner" to mean, as used in this connection, regularly licensed operators, excluding students and apprentices. Apprentices being in the service and under the supervision of regularly licensed operators, the scale of charges made for apprentice work is within the control of the licensed operators. Should conditions of health, sanitation, safety and surroundings require a minimum price to be set for apprentice work in any particular agreement, I

see no reason why such prices may not also be agreed upon and become as binding as any other part of the agreement. These minimum prices could be placed at any scale—irrespective of the fifty per cent minimum limitation set for charges by beauty schools for student work.

Sincerely yours,

JOHN W. BONNER
Attorney General