

## No. 50

**BARBERS—BARBER APPRENTICES—LICENSE OR FEE  
BY CITIES OR TOWNS OR OTHER SUBDIVISIONS OF  
STATE**

- Held:** Cities or towns or other subdivisions of the State of Montana may not require a license or fee from barbers or barber apprentices before they may practice their occupation or trade. Chapter 150, Laws of 1939, expressly prohibits any such license or fee.

March 19, 1941

Mr. Michael Wagner, Secretary  
Board of Barber Examiners  
409 Lewis Avenue  
Billings, Montana

Dear Mr. Wagner:

You have submitted the question as to whether a city or town may levy or impose a license upon barbers for the privilege of operating a barber shop within a city or town.

In answering your inquiry, it is well to quote Section 6 of Chapter 150 of the Laws of 1939, which is as follows:

“Section 6. That Section 3228.29 of the Revised Codes of Montana, 1935, as amended by Chapter 183 of the Session Laws for 1937, be, and the same is hereby amended to read as follows:

**'Section 3228.29. Fees to Be Paid by Apprentices, Students, Barbers and Barber Shops.**

A. The fee to be paid by an applicant for an examination to determine his or her fitness to receive a certificate of registration to practice barbering as defined in this Act, shall be fifteen (\$15.00) dollars, and for the issuance of said certificate an additional three (\$3.00) dollars. The fee to be paid by an apprentice or student for a certificate of registration shall be the sum of three (\$3.00) dollars.

B. Each person registered as a barber, or barber apprentice, shall on or before the first day of July of each year pay a license fee of three (\$3.00) dollars for the renewal of his or her certificate of registration, and if any barber, or barber apprentice, shall fail to have such certificate renewed on or before the first day of August of each year such barber, or barber apprentice, shall upon the renewal of said certificate of registration pay a penalty, or a restoration fee, of five (\$5.00) dollars, in addition to the regular fee of three (\$3.00) dollars provided for herein, and if a certificate of registration is not renewed within one year after date of expiration thereof, such barber, or barber apprentice, shall not be entitled to have such certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for in this Section. Provided, further, however, that physically handicapped men and women, trained for the barber profession by the State Bureau of Civilian Rehabilitation and certified by that department as having successfully completed a six (6) months course in a reputable barber college will not be required to pay any fees, but will for a period of one (1) year immediately following their training be exempted from all except the sanitary provisions of the Barber Act, or any of its amendments, and provided, further, that no other or additional license, or fee, shall be imposed upon barbers, or barber apprentices, by any municipality or other subdivision of the State of Montana." (Emphasis mine.)

It will be noted the above section is entitled, "Section 3228.29. Fees to Be Paid by Apprentices, Students, Barbers and Barber Shops," the section itself providing for the certificates and license fees to be exacted from those designated therein. It must be noted also that the above emphasized portion of Section 6 provides specifically no other additional license or fee shall be imposed upon barbers or barber apprentices by any municipality or other subdivision of the State of Montana.

A city or town by proper and legal ordinance may properly require licenses, as provided in Section 5039.2, unless the Legislature speaks otherwise.

"In its governmental capacity a city is a creature of statute, and, in the absence of constitutional limitations, the Legislature may prescribe for it such powers and privileges as it deems best."

McClintock v. City of Great Falls, 53 Mont. 221, 163 Pac. 99.

"The Legislature, representing the sovereign power of the State, may exercise such power to any extent it may choose, except to the extent it is restrained or limited by the State and Federal constitutions."

State ex rel. DuFresne v. Leslie, 100 Mont. 449.

"Necessarily, if any subdivision of the State claims any specific governmental power and the power claimed conflicts, as here, with any Act of the Legislature, such subdivision must point out where the power has been denied to the Legislature by the constitution . . .

"Furthermore, Chapter 55 was enacted subsequently to the Budget Act, and if the former Act contains any provisions in direct conflict with the later Act, the subsequent Act controls the provisions of the former."

State ex rel. Gebhardt v. City Council, 102 Mont. 27, 38, 41, 55 Pac. (2nd) 671.

Cities and towns are creatures of the State which the State may make or unmake at will. They may exercise only such powers as are delegated by the Legislature, except those especially granted by the State Constitution, which are not involved here.

Since the Legislature has specifically prohibited the licensing of barbers and barber apprentices by the above Act it is therefore my opinion that, under the express provisions of Section 6 of Chapter 150 of the Laws of 1939, no city or town or other subdivision of the State of Montana may require a license or fee from barbers or barber apprentices before they may practice their occupation or trade.

Sincerely yours,

JOHN W. BONNER  
Attorney General