

Opinion No. 29

BARBERS; Licensing; physically handicapped trainees—VOCATIONAL REHABILITATION; Barbering—SECTIONS 66-403, 66-409, and 66-411, REVISED CODES OF MONTANA, 1947.

- Held:**
- 1. The State Board of Barber Examiners may issue only an apprentice license to a physically handicapped barber trainee trained by the State Bureau of Civilian Rehabilitation and certified by that department as having successfully completed the required course in the absence of his passing a satisfactory and practical examination to determine his fitness to practice barbering.**
 - 2. Such trainee need not serve an apprenticeship of one year prior to registration as a barber if he:**
 - (a) is qualified to take the examination for license as a barber, and,**
 - (b) takes and passes such examination.**
 - 3. Such trainee may practice barbering for a period of one year immediately following his training without examination and without a license.**

October 13, 1961

Mr. Glenn O. Lockwood
State Director
Bureau of Vocational Rehabilitation
State Board of Education
Helena, Montana

Dear Mr. Lockwood:

You have requested my opinion concerning the interpretation of Sections 66-403 and 66-411, Revised Codes of Montana, 1947, as applied to physically handicapped barber trainees completing a six months' barbering course under the auspices of the Bureau of Vocational Rehabilitation. Your office has indicated that these trainees have not taken the examination conducted by the board of barber examiners to determine fitness to practice barbering.

Three questions are presented for consideration:

- (1) What type or class of certificate of registration to practice barbering may the State Board of Barber Examiners issue to a physically handicapped barber trainee trained by the State

Bureau of Civilian Rehabilitation and certified by that department as having successfully completed a six months' course in a reputable barber college?

- (2) Must such trainee serve an apprenticeship of one year prior to registration as a barber?
- (3) May such trainee practice barbering before examination and licensure?

To answer the first question, the proviso in Section 66-411, Revised Codes of Montana, 1947, (as amended) relative to these trainees must be first recognized for what it is, an exemption of a class of persons from certain statutory requirements for barbering. This exemption is a grant of permission to a class, it is not a mandate to the board administering the law applicable to that class. This proviso reads:

" . . . 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. . . "

The Board of Barber Examiners is charged by Section 66-409, Revised Codes of Montana, 1947, Subsection (1) with the duty of issuing all certificates of registration.

Section 66-403, *supra*, sets out the qualifications for persons seeking a certificate of registration to practice barbering. The qualifications for certification other than as an apprentice include passing an examination to determine fitness to practice. No authority to waive such examination is included in the powers of the board. Therefore, in the case of a physically handicapped barber trainee certified by the Bureau of Civilian Rehabilitation to the Board of Barber Examiners as having completed the six months' course contemplated by law, and prior to passing the examination required to be given to applicants for other than apprentice certification, the board may **only** register the trainee as an apprentice.

In answering the second question, and to facilitate a concise and workable interpretation of the law as it applies to these trainees it is first assumed that the course completed by the trainee and certified by the Rehabilitation Board meets all the requirements of Section 66-403, Subsection A (2), *supra*. That being the case, one year's service as an apprentice would not be mandatory on the part of the trainee prior to registration as other than an apprentice. Upon completion of the requirements of Section 66-403, Subsection A (2), *supra*, the trainee would be eligible to take the required examination and upon

passing same, to be registered as a barber as distinguished from an apprentice. Section 66-409, supra, requiring the board to have such examination not less than four (4) times each year would indicate a legislative intent that persons otherwise qualified for registration as barbers be afforded an opportunity, promptly upon so becoming otherwise qualified, to be examined toward the end that they may be fully recognized and qualified to practice. A mandatory apprentice status for one year for subject trainees would be repugnant to this intent.

The proviso in the law for the benefit of the physically handicapped trainee would, however, permit him, upon compliance with the sanitary provisions of the Barbers' Act, to practice barbering before licensure for a period of one year after completion of training. This proviso recognizes that such trainee has to earn his livelihood from the time he graduates until he can take and pass the examination. The proviso contemplates such practice of barbering by those trainees whose course meets the requirements of Section 66-403, Subsection A (2) supra.

Very truly yours,
FORREST H. ANDERSON
Attorney General