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PHOENIX, ARIZONA

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DEPARTMENT OF LAW LETTER OPINION NO. 69-15-L (R-68)

REQUESTED BY: THE HONORABLE CHRIS JOHNSON
Arizona State Senator

- QUESTIONS:
1. May a licensed barber teach advanced hair styling courses in any place other than a licensed barber school?
 2. May anyone other than a barber instructor teach advanced hair styling in the State of Arizona?
 3. May anyone other than a barber instructor teach advanced hair styling in the State of Arizona at any place other than a licensed barber school?

- CONCLUSION:
1. Yes.
 2. Yes.
 3. Yes

The State Barber Code is found in Title 32, Chapter 3, Articles 1 to 3 inclusive, of the Arizona Revised Statutes.

Article 2 concerning registration and licensing provides for licensing of barbers (A.R.S. § 32-323), apprentices (A.R.S. § 32-324), out-of-state apprentices (A.R.S. § 32-325), barber schools (A.R.S. § 32-326), barber shops (A.R.S. § 32-329), and instructors (A.R.S. § 32-334).

"A.R.S. 32-301. Definitions

* * *

"3. 'Barber School' means any place, shop or establishment wherein is taught any or all of

the fundamentals, theories, practices and practical applications of barbering."

"Instructor" is defined as an instructor in a barber school, while the fundamental course of study of a barber school is enumerated in A.R.S. § 32-328(B):

" * * * The course shall include:

"1. Not less than two hundred fifty hours devoted to the study of scientific fundamentals of barbering, hygiene, bacteriology, histology of the hair, skin, muscles and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics and diseases of the skin, hair and glands.

"2. The remaining one thousand hours is to be devoted to the practice and study of massaging and manipulating of the muscles of the scalp, face and neck, hair cutting, and shaving."

The only reference in the barber code to a post-graduate course is contained in A.R.S. § 32-328(C):

"A barber school may admit an apprentice or barber registered in another state or country to a post-graduate course. The post-graduate course shall be given only for the purpose of assisting apprentice barbers from other states or countries to prepare for examination as an Arizona licensed apprentice or barber. * * *"
(Emphasis supplied.)

Thus, a post-graduate course for any other purpose is impliedly prohibited by the doctrine of expressio unis est exclusio alterius.

There is no statutory provision in the Barber Code relating to hair styling, hair styling courses, or demonstration or

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teaching of such a course. The physical act of hair styling or demonstration of hair styling would be within the definition of barbering of A.R.S. § 32-302(A)(2), if it involved cutting, clipping, or trimming hair. Hair styling that does not involve cutting, clipping or trimming the hair of men or boys, but styling alone or cutting, clipping or trimming the hair of women or girls only, is controlled by the Cosmetology law contained in A.R.S. § 32-501 to A.R.S. § 32-554, inclusive. However, barbers acting in the proper discharge of their professional duties are exempted from the Cosmetology Code by A.R.S. § 32-521(4).

Rule 5(A) of the Rules and Regulations of the State Board of Barber Examiners provides in substance that a registered barber or apprentice may not enroll in a barber school unless the school is conducting instruction on a new or modified method or procedure, with prior approval of the Board. Rule 20 provides in substance that no one may teach or demonstrate hair styling or any form of barbering without being a licensed Arizona barber, conducting such demonstration in a barber shop or barber school, and obtaining prior approval of the Board.

The foregoing rules were enacted pursuant to A.R.S. § 32-307(A), allowing the Board to make reasonable rules and regulations for the administration of the chapter and to prescribe additional sanitary requirements. A legislatively delegated power to make rules and regulations is administrative in nature, and it is not and cannot be the power to make laws; it is only the power to adopt regulations to carry into effect the will of the legislature as expressed by the statute. Legislation may not be enacted by an administrative agency under the guise of its exercise of the power to make rules and regulations by issuing a rule or regulation which is inconsistent or out of harmony with, or which alters, adds to, extends, or enlarges, subverts, or impairs, limits, or restricts the act being administered.

It is our conclusion that Rule 5(A) is in contradiction of A.R.S. § 32-328(C) as the statute prohibits post-graduate courses other than for the specific purpose enumerated. Rule

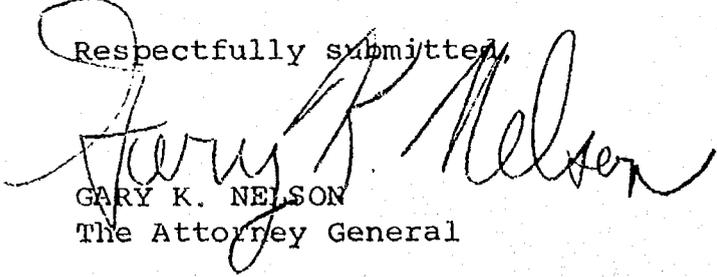
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20 is effective only to the extent that any person practicing or demonstrating hair styling insofar as the same constitutes barbering, must be a licensed Arizona barber and it must be done in a licensed barber shop.

Many sections of the Arizona Barber Code have been adopted in whole or in part from the California statutes. However, California statutes make specific provisions for refresher courses, post-graduate courses, and lectures or demonstrations by persons not licensed California instructors in §§ 6537, 6537.1 and 6537.2 of its Business and Professional Code. At the present time, the Arizona Legislature has not seen fit to enact such legislation.

The conclusion is that, absent legislation, a licensed Arizona barber may teach or demonstrate hair styling, which would constitute barbering to other licensed Arizona barbers, so long as it is done in a licensed barber shop. Instruction in a barber school is limited to the use of licensed instructors and also limited to the fundamentals of barbering as specified by A.R.S. § 32-328(B). Hair styling alone, not constituting barbering, or the cutting, clipping or trimming of the hair of women or girls only, and instruction in these areas is regulated by the State Cosmetology Code. The anomaly of this situation is one that can only be corrected by legislative action. If it is the Barber Board's desire to seek additional legislation, the California sections above referred to would be a good point of beginning.

Respectfully submitted,


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The Attorney General

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