

May 31, 1950

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Winters

Board of Beauty Culturist Examiners
415-416 Heard Building
Phoenix, Arizona

Dear Madam:

Replying to your letter of some time back regarding the rule found at the bottom of Page 26 of the book of statutes and rules of beauty culture business, said rule referred to being:

"No operator will be examined and licensed as an instructor who has had less than eighteen (18) months continuous experience in a licensed beauty shop and five hundred (500) additional hours training in a beauty school, covering a period of four (4) months, in all subjects to be taught.

Instructors course to consist of: Correcting student papers; Conducting practical and theory classes only under direct supervision of licensed instructor. Upon completion of the four (4) months training, application must be made for special instructor's State Board examination."

In your letter you state that you believe this is a reasonable rule and that it protects the public in getting well trained operators for their services and ask for an opinion regarding the validity of this rule.

By Section 67-328, ACA 1939, which is Section 28 of the Beauty Culture Law, provides:

"The Board shall have authority to make reasonable rules and regulations for the administration of this act,

and to prescribe any sanitary requirements in addition to those specified herein, in aid or in furtherance of the provisions of this act. * * *"

This statute sets the general standard of powers of boards to make rules and regulations, that is, they must be reasonable rules and regulations for the administration of this act, but cannot extend it or make new provisions. In addition to this the courts have said repeatedly that a board cannot write into a rule things beyond the provisions made by the Legislature. In the case of State Board of Barber Examiners v. Walker, 67 Ariz, commencing on page 156, reading from page 164, the court said:

"We conclude that the record supports the trial court's finding that petitioner had fully complied with all the requirements of the laws of the State of Arizona entitling her to conduct a barber school within the state, and the Board's attempted requirement that instructors be examined and licensed by them was void and of no force and effect as the rule was beyond the power of the Board to enact."

This is a very recent pronouncement by the Supreme Court by which we are bound. The question then gets back to whether this rule is a reasonable one and in conformity with the statute. Referring to Section 67-307, ACA 1939, which is the one referred to by Mr. McFate, which is Section 7 of the Beauty Culture Act, and provides:

"Any person shall be qualified to receive a certificate to practice as a registered instructor who:
(1) is a registered beauty culturist; (2) satisfactorily passes an examination to instruct in a beauty school. A certificate of registration to practice as an instructor shall include authority to practice as a beauty culturist. * * *"

Section 9 of the Beauty Culture Act, which is Section 67-309 ACA 1939, and, so far as pertinent, reads:

"Any person who desires to practice beauty culture, finger waving, manicuring, or instructing, shall file with the secretary a written application, under oath, on a form prescribed by the board, accompanied by two (2) signed photographs of the applicant five (5) by three (3) inches in size, satisfactory proof of good moral character, and a medical certificate. An applicant who has within a period of six (6) months filed photographs and medical certificate as herein provided need not again do so."

Section 10 of the Beauty Culture Act, which is Section 67-310, ACA 1939, so far as is pertinent, reads:

"The Board shall conduct examinations of applicants as provided in section 9 (§ 67-309) at least four (4) times each year, at such times and places as the board shall determine. Such examinations, except as to applicants for certificate to practice finger waving, shall include both a practical demonstration and a written and oral test, and shall embrace the subjects usually taught in schools of beauty culture approved by the board. A certificate of registration shall be issued to any applicant who shall satisfactorily pass the examination, making an average grade of not less than seventy-five (75) per cent, and who shall possess the other qualifications required by law."

The Legislature has by Section 67-307, ACA 1939, placed the manicurist and instructor in the same paragraph, regarding their qualifications, but leads us to believe the Beauty Board may give an examination respecting individuals' ability to instruct, because it says: "Satisfactorily passes an examination to instruct in a beauty school", but Section 67-309 provides all four of the types of certificates, that is "beauty culture, finger waving, manicuring, or instructing" all tied into one paragraph, and the same requirements are

for each division. Then by Section 67-310, supra, the statute says that such examinations, that is for each one of the four with exception of finger waving, shall include both a practical demonstration and a written and oral test and shall embrace the subjects usually taught in schools of beauty culture provided by the board. No place does the statute provide for special standards or qualifications for an individual to take instructor examination, except that they must be registered beauty culturists, Section 67-307 (b), and then said further "passes an examination to instruct in a beauty school". This would reasonably infer that the board may examine in some subjects different than the individual would be examined to become a beauty culturist, but by 67-310 the Legislature says: "such examinations shall include both a practical demonstration and a written and oral test." We believe this practical demonstration and a written and oral test could reasonably include subjects relating to teaching such as you have included in the latter part of the rule referred to above, such as "correcting student papers, conducting practical and theory classes", etc., but we do not believe under the Walker case that the Board has the right to require the eighteen months continuous experience in a licensed beauty business and five hundred additional hours training in a beauty school, covering a period of four months in all subjects to be taught, before the individual would be permitted to take the examination for an instructor in a beauty school.

Very truly yours,

FRED O. WILSON
Attorney General

CHAS. ROGERS
Assistant Attorney General

CR:f