



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Mrs. Ella Mae Murphy, Member  
State Board of Hairdressers and Cosmetologists  
Austin, Texas

Dear Madam:

Opinion No. O-2282

Re: Persons entering school of  
beauty culture for less than  
a six months' course of one  
thousand hours.

We are in receipt of your request for an opinion  
upon the following questions:

"I . . . . Is a person who had experience  
prior to the passage of this Act entitled to  
come before the Board for an examination with-  
out having first completed a one thousand hour course  
in not less than six months in a licensed  
beauty school?

"II. If Question numbered I. is answered  
in the affirmative, would such a person be en-  
titled to enroll in a beauty school for less  
than a one thousand hour course or for a so-  
called 'Brush-up Course.'

"III. Should Question numbered II. be an-  
swered in the negative and question numbered I.  
the affirmative, would the Board have the author-  
ity to compel a student to complete a six months'  
course of one thousand hours if such a person  
who had had experience prior to the passage of  
the Law be found enrolled for a one thousand  
hour course or not enrolled at all in view of  
registrations filed with our Office? Further,  
would the Board have the authority to file suit  
against the school under section 19a?

"IV. Would a beauty culture school be per-  
mitted to enroll a person who holds a current

license, that is an operator's, manicurist's or instructor's, for less than a six months' course of one thousand hours?

"V. Would a school be entitled to enroll a person for less than a six months' course of one thousand hours who has held a license in the State of Texas or another State, but who has allowed same to expire, and failed to re-new said license within one year after its expiration date?"

We call attention to the following pertinent provisions of Article 734(b), Penal Code, the Texas Beauty Culture Law:

"Section 11. It shall be competent for any person, firm or corporation to apply to the State Board of Hairdressers and Cosmetologists for a certificate of registration as a school of beauty culture upon the payment of One Hundred Dollars (\$100).

"(a) No school of Beauty Culture shall be granted a certificate of registration unless it . . . shall require a school term of not less than one thousand (1,000) hours to be completed in not less than six (6) months for a complete course of all or a majority of the practices of hairdressing and cosmetology."

"Sec. 14. Non-resident hairdressers or cosmetologists and graduates of licensed schools may only apply for examination under the Act upon the payment of the examination and license fee and shall have served the required time as a student or have been engaged in the practice of hairdressing and cosmetology for two (2) years in a State having requirements equal to the requirements as provided in this Act."

"Sec. 16. (a) All persons who were engaged in the actual practice of hairdressing and/or cosmetology within the State for more than twelve (12) months prior to the passage of this Act shall be entitled to a certificate without examination upon the payment of a registration fee of Three Dollars (\$3) accompanied by an affidavit certifying to the fact that such person

was actually so engaged for the period aforementioned.

"(b) Each application for examination to the State Board shall be accompanied by a cashier's check or post office money order for the sum of Ten Dollars (\$10)."

"Sec. 19. The said Board created by this Act shall have the power to revoke or suspend certificate provided in this Act, when the registrant or licensee shall have been convicted of having violated any of the provisions of this law or shall have been convicted of a felony or shall have been convicted of drunkenness or of any offense in either the State or Federal Court involving the illegal use, sale or transportation of intoxicating liquor or narcotic drugs, and any person so charged shall have the right of trial by jury in the county or district where such offense is alleged to have been committed before the revocation or cancellation of such license shall become effective.

". . ."

Section 16 (a) is the only provision of the Beauty Culture Law concerning the persons engaged in the actual practice of hairdressing and/or cosmetology within the state prior to the passage of the Act.

It exempts such practitioners for more than twelve (12) months from examination "upon the payment of a registration fee of Three Dollars (\$3) accompanied by an affidavit certifying to the fact that such person was actually so engaged for the period aforementioned."

In Opinion No. 0-1764 of this department it was held that for an instructor or a practitioner to have taken advantage of the statutory exemption from examination he must have applied for such license within one year after August 31, 1936. It was further held in this opinion that "otherwise, upon an application for license thereafter, such instructor or practitioner may be compelled to submit to the statutory examination before being entitled to a license."

The question before us is whether or not the qualified practitioner, prior to the passage of the Act, who because of failure to apply within the time limit has to take the statutory examination must also complete

a one thousand hour course in not less than six months in a licensed beauty school.

Where such person was engaged in the practice of hairdressing and/or cosmetology in Texas for more than twelve months prior to the passage of the Act and is required to take the examination, we do not believe that it is also necessary for such practitioner to complete the prescribed statutory beauty school course for non-practitioners or practitioners prior to the Act who had not been engaged in hairdressing or cosmetology for more than twelve months prior to its passage.

In the first place, it was plainly the intent of the Legislature to exempt practitioners of more than twelve months standing prior to the passage of the Act from the examination if they paid the registration fee and filed the affidavit required within the prescribed period. It follows that the penalty for not registering is the taking of the examination. The Act does not expressly state, and it cannot be reasonably implied, that in addition to taking the examination a practitioner who failed to qualify for exemption would also be required to take the statutory beauty culture course.

A careful examination of the Act does not disclose any provision to the effect that the one thousand hour course within a six months period in a licensed beauty school is a condition precedent to the taking of an examination by persons engaged in actual practice for more than twelve months prior to the Act.

We feel that this construction of Section 16 is supported by the provision in Section 14 of the Beauty Culture Law to the effect that non-resident hairdressers and cosmetologists who have "engaged in the practice of hairdressing and cosmetology for two (2) years in a State having requirements equal to the requirements as provided in this Act." may apply for the examination without completing the statutory beauty course.

It was obviously not the intention of the Legislature to allow out-of-state practitioners with two years experience to take the examination without serving the required time as a student and then require Texas practitioners with more than one year's experience prior to the Act to complete a beauty culture course before taking the examination. It cannot be presumed that the Legislature would discriminate against the State practitioners, but rather that it meant to favor them by prescribing only a twelve

months period of practice instead of a two year period as a prerequisite of an examination.

It is our opinion that your first question is answerable in the affirmative as to those persons who practiced hairdressing and/or cosmetology more than twelve months prior to the passage of the Act. We agree with the opinion of T. F. Morrow, Assistant Attorney General, dated May 24, 1938, on the same question.

Section 18 (a) provides that a school of beauty culture must have a school term of not less than one thousand (1000) hours to be completed in not less than six (6) months. Otherwise, said school shall not be granted a license. Section 19 provides for revocation or suspension of certificate upon violation of any of the provisions of the law.

We construe Section 11 (a) to require a registered beauty culture school to have a standard school term of not less than one thousand (1000) hours to be completed in not less than six (6) months. This standard course is the regular course for students who are preparing for the examination and who have not practiced hairdressing and/or cosmetology for more than twelve months prior to the passage of the Beauty Culture Law. We find nothing in the Act to prevent a registered beauty culture school from unofficially conducting a special review course for a person or persons who practiced more than twelve months prior to the passage of the Act, and yet failed to take advantage of the exemption from the examination. Furthermore, we find no prohibition in the Act against such a person attending a beauty school for a "brush-up course". The Act does not require attendance of the twelve months practitioners prior to the Act, neither does it forbid it. Enrollment would be unofficial, since such a person would not be compelled to take the required course. But as long as the school conducted the regular course for regular students, it would not be violating any provision of the law by instructing a voluntary student.

Pursuant to this reasoning it is our opinion that your second question should be answered in the affirmative, your third in the negative, and questions four and five in the affirmative.

We wish to point out that in the construction of this statute, we have not concerned ourselves with the wisdom of the law as it now stands. It is the province of the Legislature to remedy the defects in an existing enactment.