



**Office of the Attorney General
State of Texas**

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October 12, 1992

Honorable Betty Denton
Chair
Committee on Judiciary
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 92-65

Re: Authority of the Board of Barber
Examiners to require a barber who rents
or leases space in an existing, licensed
barber shop to obtain a "Booth Rental
Permit" (ID# 16699)

Dear Representative Denton:

You ask whether the State Board of Barber Examiners is authorized to "require a barber who contracts, leases or rents space from an existing licensed barber shop to have an individual 'Booth Rental Permit' and to pay a fee of \$50.00 to acquire the permit." In our opinion, the board's requirement of a booth rental permit exceeds the board's authority under the applicable statutes and is therefore invalid. *See, e.g., Kelly v. Industrial Accident Bd.*, 358 S.W.2d 874 (Tex. Civ. App.--Austin 1962, writ ref'd) (agency actions may not exceed statutory authority).

Attorney General Letter Opinion No. 90-87 (1990), a copy of which is enclosed, dealt, in part, with a similar question in regard to the authority of the Cosmetology Commission to issue a distinct booth rental license. That opinion concluded that, under the cosmetology act as then written, the only kind of license the commission was authorized to require for facilities where general cosmetology was practiced was a "beauty shop license" under section 19 of the Cosmetology Regulatory Act, article 8451a, V.T.C.S. Significantly, after the issuance of that opinion, the legislature added section 20A to the Cosmetology Act to expressly provide for "booth rental licenses." Acts 1991, 72d Leg., ch. 626, § 14.

Similarly, the Texas Barber Law, article 8407a, V.T.C.S., which regulates barbers and barber shops, provides in section 3, for the Board of Barber Examiners' issuance of "barber shop permits." The statute makes no provision for other kinds of permits for locations where general barbering is to be practiced. *See* §§ 19 (permit for barber school or college); 15a (manicurist specialty shop permit); 18 (wig specialty shop permit); 18.1 (wig school permit). As the Barber Act makes no provision for "booth rental permits," and particularly as the very similar statute, the

Cosmetology Regulatory Act, now contains a specific provision for "booth rental licenses," we conclude that the Board of Barber Examiners has no authority under its statute, as currently written, to require and issue "booth rental permits."

We note finally, however, that although we have concluded that the board is not authorized, under its act to issue distinct "booth rental permits," it nevertheless possesses broad powers to adopt rules and regulations, consistent with the Barber Act, for barbers and barbering locations. *See id.* § 28a (board has power "to regulate the practice. . .of barbering in all its particulars in keeping with the purposes and intent of [the] Act"). As we stated in Attorney General Letter Opinion 90-87 with respect to the powers of the Cosmetology Commission under the Cosmetology Regulatory Act as the latter existed at the time of that opinion's issuance, we think that the Board of Barber Examiners, here, although it does not have the power to require distinct booth rental permits, has authority under its act to promulgate regulations directed at the booth rental practices the board appears to be concerned about, so long as such regulations are consistent with the barber act and other applicable law.

S U M M A R Y

The State Board of Barber Examiners has no authority to require a barber who contracts or rents space from an existing licensed barber shop to have an individual "Booth Rental Permit."

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

Enclosure: LO90-87 (1990)