



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 26, 1995

Mr. Dick Strader
Executive Director
Texas Cosmetology Commission
P.O. Box 26700
Austin, Texas 78755-0700

Letter Opinion No. 95-037

Re: Whether or not high school graduates or dropouts may re-enroll in a public high school for the sole purpose of taking a cosmetology program and related question (ID# 24070, ID# 24071)

Dear Mr. Strader:

On behalf of the Texas Cosmetology Commission (the "commission"), your predecessor has requested an opinion from this office concerning cosmetology courses offered in the public high school system. Your predecessor also asked about refunds from schools licensed by the commission. With respect to the former area of concern, your predecessor specifically asked whether public high school graduates or dropouts may re-enroll in a public high school for the sole purpose of taking a cosmetology program and whether public schools may offer such programs other than the operator course.

We understand your predecessor to ask whether the commission may promulgate a rule that would limit training programs in public high schools to the operator course. The commission is empowered by article 8451a, section 4 of the Texas Cosmetology Act, (the "act") to "prescribe the minimum curricula of the subjects and hours of each to be taught by private beauty culture schools and vocational cosmetology programs in *public schools*." V.T.C.S. art. 8451a, § 4(d) (emphasis added). Sections 10, 11, 12, and 13 of the act set forth the requirements for operator, manicurist, instructor, and specialty licenses or certificates. Such requirements include a minimum age and educational level as well as completion of a program of instruction approved by the commission. *See id.* A careful reading of the provisions at issue reveals that the legislature intended that all courses be available through public high schools. Sections 11(b), 12(b), and 13(b) all seem to contemplate that a person holding a manicurist license, instructor license, or specialty certificate may obtain such through the completion of certain courses of training within the public high school system. Therefore, as your predecessor has been advised by the General Counsel Division of this office, it is beyond the statutory authority of the commission to promulgate a regulation limiting training programs in public high schools to the operator course. *See Gerst v. Oak Cliff Sav. & Loan Ass'n*, 432 S.W.2d 702 (Tex. 1968); *Kee v. Baber*, 303 S.W.2d 376 (Tex. 1957); *Kelly v. Industrial Accident Bd.*, 358 S.W.2d 874 (Tex. Civ. App.--Austin 1962, writ ref'd) (administrative rules and regulations must be consistent with the constitution and statutes of the state).

The decision to grant or deny admission to a public high school cosmetology program to high school graduates or dropouts is generally left to the discretion of each individual school district and the high schools therein operating in tandem with the Texas Education Agency.¹ See Educ. Code § 21.111. The commission may not interfere with this decision, with the following exception. The act requires that an applicant for an instructor's license be a high school graduate or have obtained a General Equivalency Diploma ("GED"). V.T.C.S. art. 8451a § 12(b). The commission has by rule 89.17 determined that prior to enrolling in a cosmetology school or program an instructor program student must provide a high school diploma or GED equivalent. We believe this rule is consistent with the act. Therefore, each public high school may choose to enroll high school graduates or dropouts in specialty programs, assuming such programs have been approved by the commission. A student seeking the instructor's license must be a high school graduate or possess a GED equivalent prior to enrolling in an instructor program.

With regard to your predecessor's second area of concern, he asked whether refunds to students attending schools licensed by the commission are based on the number of hours a student actually clocks and is in attendance or the number of hours the student was scheduled to attend.

The act provides the following:

Each holder of a private beauty culture school license must maintain a refund policy for the refund of the unused part of tuition, fees, and other charges assessed a student. . . . The refund policy must provide that:

a refund is based on the period of the student's enrollment, computed on the basis of course time expressed in *clock hours*;

V.T.C.S. art. 8451a, § 21(g)(1) (emphasis added). Furthermore, the act sets forth the date of termination for refund purposes as the earliest of the following:

(A) the last date of *attendance*, if the student is terminated by the school;

(B) the date of receipt by the license holder of written notice of withdrawal by the student; or

(C) 10 school days after the last date of *attendance*[.]

¹We do not address all of the circumstances in which the school board may choose to offer vocational classes and educational programs. See e.g., Educ. Code §§ 11.18, 21.111.

V.T.C.S. art. 8451a, § 21(g)(2) (emphasis added).² Thus, when construing these provisions together, we conclude that the legislature intended the effective date of termination for refund purposes not to be indefinite. The student is either terminated by the school, withdraws from the school in writing, or is terminated by operation of the statute not more than 10 school days after the last date of attendance. In any event, we note that these refund triggering events refer to the last date of *attendance*, which presumably will be the latest date the student would have clocked in rather than his or her actual scheduled hours. *See generally* Attorney General Opinion O-2279 (1940) (where student transfers from one duly licensed school to another, he or she would be entitled to credit for the number of hours spent in the first school).

Where words used in a statute are unambiguous, statutorily undefined words are to be given their ordinary meaning and every word is to be given effect if reasonable and possible unless the intent of the legislature manifested by the statute requires that meaning to be restricted or enlarged to give effect to that intent. *In re Estate of Furr*, 553 S.W.2d 676 (Tex. Civ. App.--Amarillo 1977, writ ref'd n.r.e.). In this particular instance we understand the noun "attendance" as a derivation of the verb "attends," which is defined as being present. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 114 (1983). Therefore, given the language in section 21(g)(1), of "course time expressed in clock hours" coupled with the refund triggering language in section 21(g)(2), we conclude that the student's refund must be based on the percentage of the course completed at the time of termination or withdrawal expressed in clock hours actually completed.³

S U M M A R Y

The Texas Cosmetology Commission is not authorized to promulgate a regulation limiting training programs in public high schools to the operator course. Each public high school may choose to enroll high school graduates or dropouts in specialty programs, assuming such programs have been approved by the commission. A student seeking instructor's license must be a high school graduate or possess a General Equivalency Diploma equivalent prior to enrolling in an instructors program.

Pursuant to V.T.C.S. article 8451a, section 21(g)(1) and (2), refunds to students withdrawing from schools licensed by the

²We note that termination for refund purposes under subsection (g)(2)(C) is not necessarily the same date as the actual termination of the student.

³For example, section 21(h), which provides that "if [a] student withdraws or is terminated before the last 50 percent of the course begins, the school shall refund the following percentages of any outstanding tuition," entitles the student to receive a refund based on the number of hours the student will not be physically present for actual clocked attendance. *See* V.T.C.S. art. 8451a, § 21(h).

commission must be computed on the basis of actual hours of course
time completed.

Very truly yours,

A handwritten signature in black ink that reads "Toya Cirica Cook". The signature is written in a cursive style with a long, sweeping underline.

Toya Cirica Cook
Assistant Attorney General
Opinion Committee