



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 89- 82

Louis Armstrong
Administrative Officer
State Board of Barber Examiners
717 S. Kansas Avenue
Topeka, Kansas 66603-3811

Re: Public Health--Examination, Registration and
Regulation of Barbers; Practice of Barbering
Regulated by Act; Barber Advertisement by
Cosmetologist

Synopsis: A licensed cosmetologist cannot advertise his
services as those provided by a barber shop unless
he is licensed as a barber, even though the
services performed by barbers and cosmetologists
have a common field of practice. Similarly, a
cosmetology shop providing only the services of
licensed cosmetologists cannot use a "barbering
pole" to advertise. Cited herein: K.S.A. 65-1801
et seq.; K.S.A. 65-1901 et seq.; K.S.A.
1988 Supp. 65-1904a.

* * *

Dear Mr. Armstrong:

As Administrative Officer of the State Board of Barbers you
inquire first whether the statutes regulating the practice of
barbering, K.S.A. 65-1801 et seq., preclude a licensed
cosmetologist from advertising his services as those of a
barber shop and second whether a cosmetology shop may erect a
"barbering pole" without violating the barbering statutes.
You indicate for purposes of your first question that the

licensed cosmetologist in question is a sole proprietor and has no employees that are either licensed barbers or cosmetologists. The shop is called Jack's Barber Shop and the services provided are those of a licensed cosmetologist.

We note that the legal issue presented is not whether a licensed cosmetologist (or any person) may own or maintain a barber shop. Any person may own or maintain a barber shop or a cosmetology shop, regardless of whether the person is licensed as a barber or cosmetologist. State, ex rel., v. Cavender, 131 Kan. 577, 581 (1930). See K.S.A. 65-1823 et seq. (regulation of barbering business) and K.S.A. 1988 Supp. 65-1904a (licensing of a cosmetology salon or clinic). See generally 56 A.L.R.2d 879, 894 (1957).

However, both barbers and cosmetologists must be licensed to practice their occupations. While the two occupations have a common field of practice, in this state the two are distinct and regulated by different legislative enactments, K.S.A. 65-1801 et seq. and 65-1901 et seq. A licensed cosmetologist may do all the things the cosmetology statutes permit, including those that are common to the practice of barbering, and a barber may perform all the services of a licensed barber, including those common to the practice of cosmetology. State, ex rel., v. Cavender, 131 Kan. 577 (1930). However, a cosmetologist, as any person, is prohibited from performing work exclusively within the field of barbering, unless licensed as a barber. K.S.A. 65-1808. Thus, the legal issue presented by our set of facts is whether a licensed cosmetologist that advertises his services as those of a barber shop is unlawfully holding himself out as a barber. We conclude he is.

A barber shop is defined by K.S.A. 65-1809 as a place, shop or establishment wherein the practice of barbering is engaged in or carried out. Advertising the services of a licensed cosmetologist as those provided in a barber shop indicates to the public that the practice of barbering is carried on in that establishment by a licensed barber and unlawfully holds out the cosmetologist as a barber. This misrepresentation violates both the barbering statute, K.S.A. 65-1820 and the cosmetology statute, K.S.A. 65-1907, which prohibit deceptive advertising. While a licensed cosmetologist in practicing his occupation may indeed perform many of the services performed by a licensed barber, the fact remains that the occupations are distinct as evidenced by two separate regulatory enactments K.S.A. 65-1801 et seq. and 65-1901 et seq. Further, cosmetologists are exempted from the

provisions regulating barbers and barbers are exempted from the provisions regulating cosmetologists [K.S.A. 65-1816 and 65-1902] providing a clear indication of legislative intent that the occupations remain distinct and separate. See generally People v. Taylor, 540 P.2d 320, 323 (1975).

Therefore, in our opinion a licensed cosmetologist cannot advertise his services as those of a barber shop unless he is a licensed barber even though the services performed by a cosmetologist and a barber have a common field of practice. See Attorney General Opinion No. 75-206 (cosmetology shops may not be listed under "barber shops" in yellow pages of a telephone directory).

Your second inquiry is whether the barbering statutes preclude the use of a "barbering pole" in front of a cosmetology shop wherein only licensed cosmetologists provide services. Attorney General Opinion No. 75-206 (cited above and rendered under a different administration) concludes that listings and advertising of a business establishment and services provided therein by either a licensed barber or cosmetologist may not identify those services or the business as those of [any profession] other than [the] profession for which a license is issued. We concur.

A "barbering pole" has historically advertised an establishment as a barber shop and thus indicated that the services provided are those of a licensed barber. As noted above the barber and cosmetology professions remain separate and are regulated by different legislative enactments. (See State, ex rel., v. Cavender, 131 Kan. 577 (580 (1930)) for a historical analysis of the development of cosmetology and consequent enactment of statutes regulating the two occupations.) The occupations prohibit advertising that is deceptive, K.S.A. 65-1820 and 65-1907, and clearly advertising that describes a cosmetology shop as a barbering establishment may readily be deemed deceptive. It is therefore our opinion that a cosmetology shop, wherein only licensed cosmetologists provide services, cannot use a barbering pole to advertise.

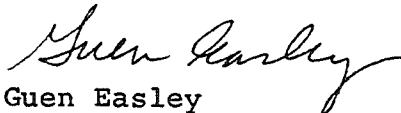
In conclusion we opine that a licensed cosmetologist cannot advertise his services as those provided by a barber shop unless he is a licensed barber, even though the services provided by barbers and cosmetologists have a common field of practice. Similarly a cosmetology shop providing only the

services of licensed cosmetologists cannot advertise those services with a "barbering pole."

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General

RTS:JLM:GE:jm