



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. 90- 118

Mr. H. R. (Rocky) Vacek, Administrative Officer
Kansas Board of Barber Examiners
717 S. Kansas Avenue
Topeka, Kansas 66603-3811

Re: Public Health--Examination, Registration and
Regulation of Barbers--Eligibility of Convicted Sex
Offenders for State Barber's License

Synopsis: While the Kansas board of barbers has the authority
to make a moral character determination about an
individual applying for licensure, the board cannot
exercise this authority prior to the individual's
application for licensure. There exists no
statutory authority for identifying suitable
candidates for a correctional facility's barber
training program. Cited herein: K.S.A. 65-1812;
K.S.A. 1989 Supp. 65-1821; 77-501 et seq.

* * *

Dear Mr. Vacek:

As administrator for the Kansas board of barber examiners you
inquire whether the board is authorized to make a
determination of an inmate/applicant's moral character prior
to their entering a correctional facility's barber training
program.

You indicate that the board would like to limit the risk of
licensure denial based on the good moral character standard in
subsection (a)(1) of K.S.A. 65-1812. The board would like to
implement a screening procedure wherein a determination of


good moral character can be made for persons convicted of sexual offenses prior to their entering a corrections facility's barber training program.

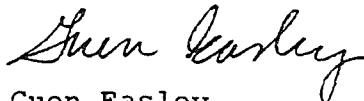
There is no question that the board is authorized to make a determination of good moral character when application for licensure is made. K.S.A. 65-1812 requires the board determine an applicant for licensure is of "good moral character and temperate habits." The moral character standard has been upheld as an appropriate inquiry for licensure when the profession or trade operates directly on the person and thereby directly affects the health, safety and welfare of the public. 10 Am.Jur.2d Barbers § 1 (1963). See also Kansas State Board of Healing Arts v. Acker, 228 Kan. 145 (1980) (the standard withstood a challenge for vagueness).

In our judgment this authority cannot be exercised prior to licensure application. The Kansas board of barber examiners, as an administrative agency, is a tribunal of limited jurisdiction. 2 Am.Jur.2d Administrative Law, § 328, 345. Their jurisdiction, determined entirely by statute, lies with supervising and regulating the practice of barbering and the barbering industry. K.S.A. 65-1808; 65-1824. Prior to applying for licensure, an individual is not within the regulatory jurisdiction of the board.

In conclusion there exists no statutory authority for identifying suitable candidates for a correctional facility's barber training program.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Guen Easley
Assistant Attorney General