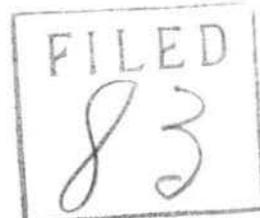


BARBER BOARD: Undesirables cannot be eliminated from the profession by health and sanitation rules promulgated by the Board.

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January 17, 1936.

Mr. J. H. Skaggs, Treasurer  
State Barber Board  
405, 100 N. Broadway Building  
St. Louis, Missouri



Dear Sir:

We acknowledge your request for an opinion dated September 23, 1935, which reads as follows:

"Inasmuch as section 13527 revised statutes of Missouri, 1929 sets out that persons following the occupation of barber at the time this law went into effect, which was in the year 1921, and who made application for a license within 90 days from its effective date, should be issued a license without passing the examination before the State Board.

"However, section 13528 sets out the qualifications that a registered barber should possess, namely; that he must be past the age of 19, of good moral character, free from infectious or contagious diseases; and has either studied the trade as an apprentice under a qualified and practicing barber, or studied the trade for at least two years in a properly appointed and conducted barber school or college under the instructions of a qualified barber, or practiced in another State for at least two years.

"Now, the State Barbers' Board is of the impression that inasmuch as during a 90 day period following August 27, 1935 which was the effective date of the amendment to our license law, making it state wide, that we were to issue license to barbers in towns throughout the

state of less than 5,000 population without having them pass the examination before the said Board, as was done in 1921.

"However, we are of the impression that this means simply that barbers not be required to go through the routine of an examination, and that the examination fee of \$5.00 be omitted.

"However, that the qualifications as set out in section 13528 should prevail when issuing license without examination the same as if they were being obtained by passing examination; this being the procedure that was followed at that time.

"I would therefore appreciate an opinion from you as to whether or not the Board should require that applicants for license without an examination should possess the qualifications set out in section 13228 the same as if he were obtaining his license by passing the examination.

"Please give us this opinion at your earliest possible convenience, as we have several cases in our files that will be disposed of in accordance with your opinion in this matter."

Section 13522 R. S. Mo. 1929 provides:

"It shall be unlawful for any person to follow the occupation of a barber in this state, unless he shall have first obtained a certificate of registration, or permit, as provided in this chapter: Provided, however, that nothing in this chapter contained shall apply to or affect any person who is now actually engaged in such occupation, except as hereinafter provided."

Section 13523 R. S. Mo. 1929, provides in part:

"A board of examiners, to consist of three persons, citizens of this state for at least three years prior to their appointment, is hereby created to carry out the purposes and to enforce the provisions of this chapter. \* \* \* \* Said board shall, with the approval of the state board of health, prescribe such sanitary rules as it may deem necessary, with particular reference to the precautions necessary to be employed to prevent the creating and spreading of infectious or contagious diseases. A copy of such rules shall be furnished each person to whom a certificate of registration or permit is granted. \* \* \*."

Section 13524 R. S. Mo. 1929, provides in part:

"\* \* \* \* Provided, this chapter shall not apply to cities or towns in this state which now have or hereafter may have a population of less than five thousand (5,000) inhabitants."

Section 13527 R. S. Mo. 1929 provides:

"Every person now engaged in the occupation of barber in this state shall, within ninety days after the approval of this law, file with the secretary of said board a written statement, setting forth his name, residence and the length of the time during which the place where he has practiced such occupation, and shall pay to the treasurer of said board two dollars; and a certificate of registration entitling him to practice the said occupation for the fiscal year ending January thirty-first, 1922, thereupon shall be issued to him and the holders of

such certificates shall annually, within thirty days before the expiration of their respective certificate, make application for the renewal of same, stating the number of expiring certificate, and shall in each case pay to the treasurer of said board the sum of two dollars therefor. For any and every license or certificate given or issued by the board a fee of two dollars shall be paid by the person receiving the same."

The original barber license law was approved on April 7, 1921. In *ex parte Lucas*, 160 Mo. 218, l. c. 232, our Supreme Court held a barber law legal because such is a health measure, and they quoted approvingly from the Supreme Court of Minnesota as follows:

"Laws enacted for the purpose of regulating or throwing restrictions around a trade, calling, or occupation, in the interest of the public health and morals, are everywhere upheld and sustained. Such laws are within the police power of the State, and are universally sustained where enacted in the interest of the public welfare. The question presented in cases where the validity of such laws is called in question is no longer the power or authority of the Legislature to enact them, but whether the occupation, calling or business sought to be regulated is one involving the public health and interests. A person engaged in such an occupation is not alone interested therein. The public served by him is also interested. He is interested to the extent that it provides and furnishes him with employment and a means of livelihood. The public is interested in his competency and qualifications, and it is eminently proper that there be thrown around the calling, protection from intrusion by incompetents and others inimical to the public good."

Since the approval of the above act, on April 7, 1921, there has been but one amendment where the above quotation from Section 13524 was stricken from the Act in the Laws of 1935, p. 191. The legal effect of changing Section 13524 was to make a general law out of all provisions set out in Chapter 103 R. S. Mo. 1929, where prior to the time of the changed section the provisions of the chapter did not apply to cities or towns of less than 5,000 inhabitants.

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The change effected in Section 13524 R. S. Mo. 1929 amounts to a reenactment of the remaining provision of Chapter 103, as new law, insofar as barbers practicing in cities or towns of less than 5,000 inhabitants are affected by said chapter. The new law requires of barbers practicing in cities and towns of 5,000 inhabitants the possession of a formal license to practice their profession, and without the license their practice is unlawful.

The immediate purpose of the barber license law in Missouri is not to prohibit the practice of an honorable profession, but rather to regulate and control the practice in the whole State without exception. The fee for license is only incidental to the regulations prescribed, and is taxed only to provide funds for the purpose of inspecting and controlling unhealthy practices in the profession. The Act was not passed as a revenue measure, but as a health measure. The Board in administering the Act should administer it as a health measure, and not as a tax measure, and from your letter we believe you are so endeavoring.

It is obvious that the Legislature, by this amendment, intended to include those who practice barbering any place in the State within reasonable health regulations. The solicitation and profession of men who ignorantly undertake to practice barbering is a threat to public health, and it was in the exercise of its police power that this Act was passed by the Legislature in the first instance and amended in the second instance.

Section 13528, noted in your request, was not intended to impose legislative conditions on persons actively and legally in the occupation of barbering before being eligible for a license. Its provisions relate only to the prospective barber and apprentice, and barbers who were

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legally practicing the profession in cities of less than 5,000 inhabitants at the time the 1935 amendment went into effect, do not come within the provisions of section 13528. Its provisions as such have no force in eliminating undesirable practicing barbers from the profession.

Section 13522, supra, since the 1935 amendment, plainly requires all barbers in this state to have either a certificate of registration or a permit while practicing their profession in Missouri.

Section 13523, supra, designs the Board and gives the Board power to make sanitary and health rules approved by the State Board of Health. Under the power to make rules the Board may properly rule that present applicants for barber license in cities and towns of less than 5,000 inhabitants should possess the health and sanitary qualifications set out in Section 13528, but the Board has no power and cannot prohibit otherwise qualified barbers from obtaining a license by any rule which does not have the earmarks of a health or sanitation rule. Some of the provisions of Section 13528, are not, strictly speaking, health or sanitary qualifications and should not be required of a practicing barber who can otherwise qualify under the general health and sanitation rules laid down by the Board. Under the provisions of Section 13523, supra, the Board's power to make general health and sanitation rules binding upon the profession is only limited by an approval of said rules by the State Board of Health. It is for the non-compliance of legal rules as set out in Section 13532 that the Barber Board can eliminate undesirables from the profession.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

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JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General.