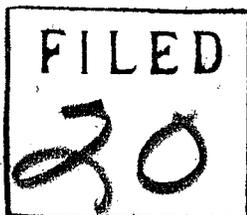


COSMETOLOGY:
PRACTICE OF:
STATE BOARD OF
COSMETOLOGY:
COMPENSATION:
TIPS, LICENSE;
JOHN M. DALTON
XXXXXXXXXX

A person who dresses hair and receives nothing for such service is not required to obtain a certificate of registration from the State Board of Cosmetology. What constitutes the occupation of hairdressing, cosmetology and manicuring is set forth in detail in Section 329.020, supra, and where the things enumerated are done for tips regularly given they constitute compensation and a license must be secured.



February 3, 1953

2-3-53

XXXXXXXXXX

J. E. Johnsen

Honorable Robert E. Crist
Prosecuting Attorney
Shelbina, Missouri

Dear Sir:

Your request for an opinion of this office has been referred to me for answer and the pertinent part of said request is as follows:

"Will you please advise if under Sections 329.041 and 329.250, M.R.S., 1949, a person who dresses hair in her home, but who does not make any charge therefor, is required to obtain a certificate of registration from the State Board of Cosmetology.

"Would your opinion be any different if such person accepted tips from persons to whom she had given services, as a hairdresser.

"Will you please further advise as to what constitutes the occupation of hairdressers, cosmetologists or manicurists as stated in Section 329.041 and 329.250."

In answer to the question posed in the first paragraph of your letter quoted above with regard to Sections 329.250 and 329.041, RSMo. 1949, (Cumulative Supplement, 1951), we believe the answer to it to be found in Section 329.020, RSMo. 1949, which reads as follows:

"The following classifications of practices shall be adopted and understood to define practitioners within the meaning of this chapter:

"(1) Class A --Any person who engages for compensation in any one or any combination of the following

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practices, to wit: Arranging, dressing, curling, singeing, waving, permanent waving, cleansing, cutting, bleaching, tinting, coloring or similar work upon the hair of any person by any means shall be construed to be practicing the occupation of a hairdresser. Any person who with hands or mechanical or electrical apparatuses or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions or creams engages for compensation in any one or any combination of the following practices, to wit: Massaging, cleaning, stimulating, manipulating, exercising, beautifying or similar work, upon the scalp, face, neck, arms, or bust or removing superfluous hair by means other than electricity about the body of any person shall be construed to be practicing the occupation of a cosmetologist or cosmetician;

"(2) Class B--Any person who engages for compensation in the manicuring of nails shall be construed to be practicing the occupation of a manicurist."
(Underscoring ours.)

As you see, the underscoring part of the above statute makes it a violation for any person to practice cosmetology, hairdressing or manicuring for compensation of any kind whatsoever without first being licensed.

You say this woman does not receive compensation and therefore she could not be guilty of violating the Act.

With regard to the question posed in the second paragraph above set out we wish to state that our opinion would be different than in our answer given to your first question. If the person practicing cosmetology, hairdressing and manicuring received compensation of any kind whether the same was a charge made or tips given with regularity for the services performed, she must first have a license.

Our reason for holding that tips were regularly given to the operator for beauty work, hairdressing and manicuring by the recipient is compensation, is because of the holding of the court in *Williams v. Jacksonville Terminal Co.*, 118 F. 2d. 324, where the court at l.c. 325, 326 and 327, said:

"We will not stick upon the general meaning of the word 'tip'. Webster's International Dictionary makes the tip to be a gift, a fee; and defines a fee as a compensation for service rendered. The

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Standard Dictionary says a tip is money given, as to a servant, to secure better or more prompt service. It would seem that a tip may range from a pure gift out of benevolence or friendship, to a compensation for a service measured by its supposed value but not fixed by an agreement. Most often the term is applied to what is paid a servant in addition to the regular compensation for his service, to secure better service or in recognition of it. But the Fair Labor Standards Act makes no reference to 'tips', and the notice given the red caps refers to 'tips or remuneration'. We are not concerned with the proper meaning of the word, but with the legal status of what the passengers paid these red caps, by whatever name called. Along with dictionary definitions, we put aside a number of decisions cited about the ownership of tips, somewhat conflicting, because each dealt with its own kind of tip and none from an appellate court dealt with money paid a red cap by a passenger.

"(1) This record makes no effort to prove or agree on the actual intention of passenger, red cap, or Terminal Company, when at any time a porter service was rendered and remunerated. It is left to common knowledge and reasonable inference. Railroad travel is so general and red cap service so familiar that it may well be considered, as it touches the passenger, a matter of common knowledge. We so deal with it. Before the day of red caps the passenger depended for assistance on the chance presence of some jobless person, and paid him for his help. The red caps took the place of the jobless ones at large terminals, and rendered a supervised service; but the railroad carriers were not bound to afford any such service to the passenger, and the reward of it was left a matter between red cap and passenger, with the stipulation that the amount should be left to the passenger and there should never be annoyance or embarrassment about it. It may be that the red caps were always employees of the Terminal Company in that it selected them and was probably answerable for their honesty and carefulness; but they were not employees for wages, their time and efforts were their own, and what they earned belonged to them. Passengers understood this; they knew that what they paid did not go to the Terminal Company, but was the meat and bread of the red cap. What they paid was influenced by the generosity and wealth of the passenger as well as by the number and weight of his bags, and at times by the needy

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appearance or the cheerfulness and promptness of the red cap. But in every case the tip was primarily a compensation for service, and not a gift. The red cap expected nothing unless he served. No passenger ever gave a red cap anything unless there was service. Every passenger paid for service unless he or she was very stingy or financially unable, or else ignorant that pay was expected. The acceptance of service carried an expectation of reward on both sides. What the red cap received was not gifts but earnings. If they amounted to enough he owed income taxes on them; and they belonged to him, either because the business was his, or if an employee, because his employer conceded them to him.

* * * * *

"When it is clearly apprehended that red cap tips are not personal gifts, but compensation for service which since October 24, 1938, is rendered by the red caps for the Terminal Company, for a wage which the Terminal Company is absolutely bound to pay, it becomes plain that the tip money is the money of the Terminal Company, irrespective of the consent of the red caps; and when they are paid their wages in part or in whole out of it, they are not paid with their own but their employer's money."

In answer to the question posed in the third paragraph of your request as above set out, it is our opinion that what constitutes the occupations of hairdressers, cosmetologists and manicurists as mentioned in Sections 329.041 and 329.250, RSMo 1949 (Cumulative Supplement, 1951) is set out in detail in Section 329.020, supra, and that where the things done as mentioned therein are done for compensation of any kind whatsoever it constitutes the occupation of hairdressing, cosmetology or manicuring.

CONCLUSION

It is, therefore, the opinion of this department that a person dressing hair in her home not making a charge of any kind therefor, is not required to obtain a certificate of registration from the State Board of Cosmetology; that a person who dresses hair in her home who accepts tips given with regularity from persons to whom

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she has given service as a hairdresser is practicing as a hairdresser for compensation and must obtain a certificate of registration from the State Board of Cosmetology; that which constitutes the occupation of hairdressers, cosmetologists or manicurists is set forth and enumerated under Section 329.020, RSMo 1949, in detail where the same is done by any person for compensation of any kind whatsoever.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. A. Bertram Elam.

Yours very truly,

JOHN M. DALTON
Attorney General

ABE:mw