

BARBERS - (1) Article 5 R. S. Mo., 1939, which has to do with the trade of cosmetology, hairdressing and manicuring, has no application in cities having a population of less than five hundred inhabitants. (2) Persons practicing the trade of barbering must procure a barber's license in cities having a population of less than five hundred, whether they have complied with Art. 5, R. S. Mo., '39 or not.

(20)

October 15, 1941

Mr. L. N. Dixon
Secretary
State Board of Barber Examiners
Princeton, Missouri

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Dear Sir:

We are in receipt of your letter of September 24, together with clipping from paper, each of which reads as follows:

"I am enclosing a copy of a letter received from J. E. Stephenson, a barber at Rockport, Missouri. Now here is what the situation sums up to; and why the barbers are up in arms over it. The barber shops in Atchison County all charge 25¢ for shaves and 50¢ for hair cuts. Now it seems under Section 9811 R. S. Mo. 1939 that a beauty operator under Class A can cut hair yet under Section 9831 R. S. Mo. 1939 the provision of this article shall not be held to apply within any city of this state which now or hereafter has a population of less than 500 inhabitants. Watson has a population of 269.

"I am not an attorney but have talked to W. S. Thompson, prosecuting attorney for Mercer County and he said he did not know what to do and the best thing I could do was to write to the Attorney General for an opinion.

"Would you please give an opinion in this matter so that I can take whatever steps are necessary."

"The ad

HAIR CUTTING
25c
Men's and Boys' Hair-
Cutting A Specialty
DOROTHY'S
BEAUTY PARLOR
Watson, Mo."

From a reading of Article 5, of Chapter 57 R. S. Missouri, 1939, which Article has to do with cosmetologists, hair-dressers and manicurists, including Section 9810 to 9831, inclusive. We call particular attention to Section 9831 of said Article, which Section reads as follows:

"Provided, the provisions of this article shall not be held to apply within any city of this state which now or hereafter has a population of less than 500 inhabitants."

Therefore, from a reading of this Section the legislature in the enactment of said Section directly and emphatically provided that the Sections contained in Article 5, supra, should have no application in any city of this State which now, or hereafter, has a population of less than five hundred inhabitants.

Now, from a reading of your opinion request, together with the exhibit placed thereto, the question arises whether or not the person referred to in the opinion request is amenable to any other Statutes of this State. In this connection we call attention to Sections 10127 R. S. Missouri, 1939, which reads as follows:

"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, 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 10131 R. S. Mo., 1939, -

"Such board shall hold public examinations at least four times in each year, at such times and places as it may deem advisable, notice of such meetings to be given by publication thereof at least ten days prior to such meetings, in at least two newspapers published in this state, in the locality of each proposed meeting."

And a part of Section 10133 R. S. Mo., 1939 - which reads as follows:

"Any person not following the occupation of barbering at the time this chapter goes into operation, desiring to obtain a qualified certificate of said occupation in this state, shall make application to said board therefor and shall pay to the treasurer of said board an examination fee of ten dollars, and shall present himself at the next regular meeting of the board, for examination of applicants,
* * * * *"

It will be noted from reading the above Sections that the legislature through these Sections has provided that any person desiring to procure a barber's license must appear before the Barbers' Board and pass the examination which entitles them to a barber's license.

In 37 C. J., P. 167, we find the following, in Par. 2:

"A privilege is the exercise of an occupation or business which requires a license from some proper authority, designated by some general law, and is not free to all, or any, without such license. To constitute a privilege the grant must confer authority to do something which, without the grant, would be illegal, for if what is to be done under the license is open to all without it, the grant would be nugatory."

The Court in the case of State v. Parker Distilling Company, 236 Mo. 219, at l. c. 268, had this to say, quoting from Vol. 5, Words & Phrases 4137 (Old Series):

"A license is essentially a grant of special privilege to one or more persons, not enjoyed by citizens generally, or, at least, not enjoyed by a class of citizens to which the licensee belongs. A common right is not the creature of a license law." (5 Words and Phrases, p. 4137; State v. Frame, 39 Ohio l.c.413.)

"The popular understanding of the word license is a permission to do something which, without the license, would not be allowable, and such is the legal definition." (Youngblood v. Sexton, 32 Mich. 406, l. c. 419.)

"'A license is permission granted by some competent authority to do an act which, without such permission, would be illegal.' (State v. Hipp, 38 Ohio 199, l. c. 226.)

"'A license in its proper sense is a permit to do business which could not be done without the license.' (City of Sonora v. Curtin, 137 Cal. 583.)

"'The object of a license is to confer a right which does not exist without a license. A license is a privilege granted by the State, usually on payment of a valuable consideration. To constitute a privilege the grant must confer authority to do something which without the grant would be illegal; for if what is to be done under the license is open to everyone without it, the grant would be merely idle and nugatory, conferring no privilege whatever.' (Cooley on Taxation (3 Ed.), 1037.)"

Therefore from reading the above case and excerpt from C. J. we find that a license is a grant by the State and gives the holder of said license the privilege to perform the service that is designated in the particular license. The State has the right to either withhold, or to grant, the license or privilege. It also has the right to pass such laws as it deems necessary setting up the method which must be followed by one who desires to procure the license.

We call attention, also, to Section 10138 R. S. Missouri, 1939, which reads as follows:

"Any person who is engaged in the capacity so as to shave the beard

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or cut and dress the hair for the general public, shall be construed as practicing the occupation of barber, and the said barber or barbers shall be required to fulfill all requirements within the meaning of this chapter."

From a reading of this latter Section we find that any person who desires to shave the beard or cut and dress the hair for the general public shall be construed as practicing the occupation of barber. Therefore, in towns having a population of less than five hundred inhabitants, in view of the fact that Article 5 has no application, but when we view Chapter 67, which contains the Sections applicable to the barber trade, we find that no such exception is contained therein.

Therefore, all of the Sections pertaining to the barber trade are applicable to each and every city in the State regardless of size.

CONCLUSION.

In conclusion it is our opinion that a person who may or may not have fulfilled the requirements of Article 5, of the Statutes of 1939, if he or she desires to practice the barber trade as defined in Section 10138, he or she must procure a license as was provided for in Chapter 67 R. S. Missouri, 1939, in cities less than 500 inhabitants.

APPROVED:

Respectfully submitted

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