

COSMETOLOGIST:
COSMETOLOGY, BOARD OF:
PROFESSIONAL REGISTRATION,
DIVISION OF:
RULES AND REGULATIONS:

Chapter 329, RSMo, and 4 CSR 90-2.010(5)(D) require actual, documented school attendance in the minimum number of hours specified by statute before cosmetology students can be licensed.

July 24, 1996

OPINION NO. 218-96

The Honorable John T. Russell
State Senator, District 33
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Russell:

This opinion is in response to your question concerning the minimum training hours requirement for persons seeking licensure as a cosmetologist. You state your question as follows:

Most states have a statute and/or regulation which requires a candidate for a cosmetology license to have completed a training program of a set number of hours (typically 1500 hours). Frequently in the regulations to implement this statute, the State Board of Cosmetology requires proof that a student was physically present at the school for each hour of the training program. My question is that as long as the program is the required length (1500 hours) and the graduate has completed the program satisfactorily must he/she demonstrate physical presence for each hour of the course?

In responding to your question, we confine our opinion to Missouri law.

Chapter 329, RSMo, contains the statutory provisions governing licensure of cosmetologists. Various provisions are relevant to your question. Section 329.050, RSMo Supp. 1995, states in relevant part:

1. Applicants for examination or licensure under this chapter shall possess the following qualifications:

* * *

(3) If the applicants are students, they shall have had the required time in a licensed school of no less than one thousand five hundred hours training for the classification of cosmetologist, with the exception of public vocational technical schools in which a student shall complete no less than one thousand two hundred twenty hours training. All students shall complete no less than three hundred fifty hours for the classification of manicurist. All students shall complete no less than seven hundred fifty hours for the classification of esthetician. However, when the classified occupation of manicurist is taken in conjunction with the classified occupation of cosmetologist, the student shall not be required to serve the extra three hundred fifty hours otherwise required to include manicuring of nails; and [Emphasis added].

* * *

Section 329.040.3, RSMo Supp. 1995, which addresses the licensure requirements for schools of cosmetology, states in relevant part:

3. No school of cosmetology shall be granted a license under this chapter unless it:

* * *

(3) Requires for the classified occupation of cosmetologist, the course of study shall be no less than one thousand five hundred hours or, for a student in public vocational/technical school no less than one thousand two hundred twenty hours. The student must earn a minimum of one hundred and sixty hours of classroom training before the student may perform any of the acts of the classified occupation of cosmetology on any patron or customer of the school of cosmetology; [Emphasis added].

* * *

Section 329.040.4, RSMo Supp. 1995, listing in detail the subjects required to be taught by schools of cosmetology for the classified occupation of cosmetology, and including a minimum hours requirement for each subject, states:

4. The subjects to be taught for the classified occupation of cosmetology shall be as follows and the hours required for each subject shall be not less than those contained in this subsection:

- (1) Shampooing of all kinds, forty hours;
- (2) Hair coloring, bleaches and rinses, one hundred thirty hours;
- (3) Hair cutting and shaping, one hundred thirty hours;
- (4) Permanent waving and relaxing, one hundred twenty-five hours;
- (5) Hairsetting, pin curls, fingerwaves, thermal curling, two hundred twenty-five hours;
- (6) Combouts and hair styling techniques, one hundred five hours;
- (7) Scalp treatments and scalp diseases, thirty hours;
- (8) Facials, eyebrows and arches, forty hours;
- (9) Manicuring, hand and arm massage and treatment of nails, one hundred ten hours;
- (10) Cosmetic chemistry, twenty-five hours;
- (11) Salesmanship and shop management, ten hours;
- (12) Sanitation and sterilization, thirty hours;
- (13) Anatomy, twenty hours;
- (14) State law, ten hours;

(15) Curriculum to be defined by school, not less than four hundred seventy hours.

State regulations concerning cosmetology, specifically 4 CSR 90-2.010(5)(D), require actual attendance at the school for each hour needed to sit for examination. Such rule provides in part:

. . . The phrase, training hours, is defined as the number of hours a student was in attendance at the school and for which time the school kept a record of those hours for instruction or training.

This regulation requires actual, documented attendance at the school in the specified minimum number of hours.

Chapter 329, RSMo, grants the state board of cosmetology the power to make rules on various matters. See, for example, Sections 329.035, 329.080, 329.100, and 329.210, RSMo Supp. 1995 and Sections 329.230 and 329.240, RSMo 1994. "The well-established rule is that regulations may be promulgated only to the extent of and within the delegated authority of the statute involved." Parmley v. Missouri Dental Board, 719 S.W.2d 745, 755 (Mo. banc 1986). See Missouri Attorney General Opinion No. 58, McBrayer, 1964, a copy of which is enclosed, regarding the authority of the state board of cosmetology to promulgate rules. "Rules and regulations issued under an act are to be sustained unless unreasonable and plainly inconsistent with the act and are not to be overturned except for weighty reasons." Four Rivers Home Health Care, Inc. v. Director of Revenue, 860 S.W.2d 2, 4 (Mo. App. 1993).

The issue for consideration is whether 4 CSR 90-2.010(5)(D) explicitly defining training hours as actual, documented hours in attendance at the school is consistent with the statute. Words contained in a statute should be given their plain and ordinary meaning. McCullum v. Director of Revenue, 906 S.W.2d 368, 369 (Mo. banc 1995). Section 329.050.1(3) refers to the hours as being "required time in a licensed school" and as being "hours training." Such subsection also states the student is not "required to serve" certain hours if the occupation of manicurist is taken in conjunction with the occupation of cosmetologist. The plain and ordinary meaning of these phrases is consistent with the hours being actual hours in attendance at the school.

Furthermore, Section 329.040.4 lists in detail the subjects required to be taught and includes a minimum hours requirement for each. Some of the subjects require as few as ten hours of training. If the specified number of hours did not refer to actual hours in attendance, a student might miss ten hours of school and miss all of the hours relating to a specific

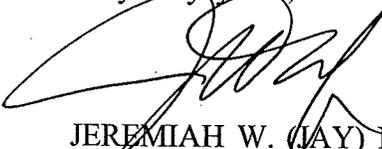
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subject required by statute. By interpreting the statute to require students to be in attendance for the specified number of hours, the student will receive the training required by statute.

CONCLUSION

It is the opinion of this office that Chapter 329, RSMo, and 4 CSR 90-2.010(5)(D) require actual, documented school attendance in the minimum number of hours specified by statute before cosmetology students can be licensed.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure