OPINION NO. 80-032

Syllabus:

The use of sun lamps to provide a patron with a suntan does not constitute the "practice of cosmetology" within the definition set forth in R.C. 4713.01(A), and, therefore, tanning salons and their operations are not subject to regulation by the State Board of Cosmetology under R.C. Chapter 4713.

To: Robert L. Moore, Executive Director, Ohio State Board of Cosmetology, Columbus, Ohio

By: William J. Brown, Attorney General, May 30, 1980

I have before me your request for my opinion as to whether the commercial use of fluorescent sun lamps, whereby the patron receives a predetermined amount of ultraviolet radiation to exposed skin for the purpose of achieving a suntan, constitutes the practice of cosmetology.

As your request indicates, if the operation of a tanning salon constitutes the practice of cosmetology, then tanning facilities must be licensed by the Board of Cosmetology and comply with all requirements established by statute and rule. See, e.g., R.C. 4713.13 (licensing requirements for beauty salon); R.C. 4713.14 (requirements for operating beauty salon); R.C. 4713.20 (prohibition against operating beauty salon without license); 6 Ohio Admin. Code 4713-1-07 (cosmetology services in beauty salons may be performed only in rooms approved and licensed by the state). This result follows from the fact that, pursuant to R.C. 4713.01(D), a "beauty salon" includes "any premises, building, or part of a building, in which any

branch of cosmetology. . .is practiced." Similarly, if the operation of a tanning salon constitutes the practice of cosmetology, then persons who engage in the practice are "cosmetologists," as defined in R.C. 4713.01(B), and are subject to all training and licensing requirements governing cosmetologists. See, e.g., R.C. 4713.04 (qualifications for cosmetologist's license and managing cosmetologist's license); R.C. 4713.06 (examinations for applicants for licenses); 6 Ohio Admin. Code 4713-9-33 (curriculum for cosmetology students); 6 Ohio Admin. Code Chapter 4713-11 (examinations for applicants for licenses). Thus, if it is determined that the operation of a tanning facility constitutes the practice of cosmetology, substantial practical effects will follow.

An analysis of your question turns on the definition of the "practice of cosmetology" which appears in R.C. 4713.01(A). That section states in pertinent part:

> The practice of cosmetology includes work done for pay, free, or otherwise, by any person, which work is usually performed by hairdressers, cosmetologists, cosmeticians, or beauty culturists, however denominated, in beauty salons ordinarily patronized by women; which work is for the embellishment, cleanliness, and beautification of hair, wigs, and postiches, . . . and the massaging, cleansing, stimulating, manipulating, exercising, or similar work upon the scalp, face, arms, or hands, by the use of mechanical or electrically operated apparatus or appliances, or cosmetics, preparations, tonics, antiseptics, creams, or lotions, . . .which enumerated practices shall be inclusive of the practice of cosmetology, but not in limitation thereof. Sections 4713.01 to 4713.21 of the Revised Code do not permit any of the services or arts described in this section to be used for the treatment or cure of any physical or mental diseases or ailments. (Emphasis added.)

Pursuant to this definition, the practice of cosmetology is limited to certain types of work—namely, work "for the embellishment, cleanliness, and beautification of hair, wigs, and postiches" and " the massaging, cleansing, stimulating, manipulating, exercising, or similar work upon the scalp, face, arms, or hands." Clearly, the use of sun lamps for tanning purposes does not constitute work for the cleanliness or beautification of hair, wigs, or postiches. There remains the question whether such use constitutes "massaging, cleansing, stimulating, manipulating, exercising, or similar work upon the scalp, face, arms, or hands."

As you have described the operation of a tanning salon, it involves a procedure whereby technicians plan a tanning program for a patron, based upon such factors as complexion oil content, skin color, and skin thickness. The technicians determine the amount of exposure to the lights needed at each visit. The tanning process itself takes place in a private booth equipped with fluorescent sun lamps. The lamps produce ultraviolet rays which activate a brown skin pigment in the skin. That pigment then combines with protein cells and produces a tan.

It might be argued that the use of sun lamps to bring about the tanning process constitutes "the massaging, cleansing, stimulating, manipulating, exercising, or similar work upon the scalp, face, arms, or hands, by the use of mechanical or electrically operated apparatus or appliances" for purposes of R.C. 4713.01(A), thereby bringing the tanning operation within the practice of cosmetology. Such a conclusion is not, however, justified by the language of the statute. It is true that the type of tanning operation in question involves the use of electrically operated apparatus or appliances. The operation does not, however, involve the type of relationship among the operator, the apparatus, and the patron which is contemplated by R.C. 4713.01(A). Each of the series of words used in R.C. 4713.01(A) implies a process whereby the cosmetologist undertakes some sort of physical contact with the enumerated areas of the patron's body, either by means of a mechanical or electrically operated apparatus or appliance, or with cosmetics, preparations, tonics, antiseptics, creams, or lotions. "Massage" is defined in Webster's New World Dictionary 872 (2d college ed. 1976) as follows: "a rubbing,

kneading, etc. of part of the body, usually with the hands, as to stimulate circulation and make muscles or joints supple." Webster's defines "stimulate" at 1400 as follows: "1. to rouse or excite to action or increased action; animate. . . 3. Med., Physiol. to excite (an organ, part, etc.) to activity or increased activity." "Cleanse" means simply "to make clean"; it connotes a physical washing. Webster's at 264. "Manipulate" is defined in Webster's at 862 as meaning "to work, operate, or treat with or as with the hand or hands; handle or use, esp. with skill." "Exercise" has a number of definitions; the most appropriate seems to be "to put (the body, a muscle, the mind, a skill, etc.) into use so as to develop or train." Webster's at 490. Hence, the words used in the statute contemplate some sort of activity in which the cosmetologist physically applies the apparatus or appliance, or the cosmetic or other preparation, to the scalp, face, arms, or hands of the patron. In contrast, the operation you have described consists of the technician's arranging for the patron to be exposed to ultraviolet rays from the sun lamps in a private booth, without any physical contact between the technician and the patron during this process.

Furthermore, under the rule of ejusdem generis, general words in a statute which follow a designation of particular words will ordinarily be construed as restricted by the particular language to include only things or activities of the same general kind, class, or nature as those specifically mentioned, unless there is a clear manifestation of a contrary purpose. State v. Aspell, 10 Ohio St. 2d 1, 225 N.E. 2d 226 (1967); Glidden Co. v. Glander, 151 Ohio St. 344, 86 N.E. 2d 1 (1949). The rule that general words be restricted to items of the same nature as specific words which precede them is particularly applicable where, as here, the general words are qualified by the requirement that any activities which are included be "similar" to those expressly mentioned. See Knight v. Johnson, 13 Ohio Dec. 715, 718 (1903) ("It is a rule of interpretation. . .that where a statute. . .enumerates several classes of persons or things, and immediately following and classed with such enumeration, the clause embraces 'other' persons or things, the word 'other' will generally be read as 'other such like;' so that persons or things therein comprised may be read as ejusdem generis with and not of a quality different from those specifically enumerated."). It is true that R.C. 4713.01(A) states that the "enumerated practices shall be inclusive of the practice of cosmetology, but not in limitation thereof." Still, under the rule of ejusdem generis, the practice of cosmetology must be limited to practices which share the basic characteristic of those terms listed—that is, the physical contact brought about by an operator who massages, stimulates, cleanses, manipulates, or exercises the scalp, face, arms or hands of a patron.

It should also be noted that the massaging or stimulating activity included within the definition of the practice of cosmetology extends only to "the scalp, face, arms, or hands" of the patron. In contrast, the tanning process you describe is anticipated to extend well beyond the areas of the scalp, face, arms, and hands. The materials you have provided indicate that the fluorescent lights shine throughout a private booth, so that the patron may obtain treatment upon the patron's entire body, or upon such portion of the body as the patron chooses. This factor, too, serves to remove the tanning operation from the practice of cosmetology.

There is an additional reason why a tanning operation does not constitute the practice of cosmetology. The definition of the practice of cosmetology is expressly limited to work done "in beauty salons ordinarily patronized by women." As one of my predecessors noted, in 1934 Op. Att'y Gen. No. 2431, vol. I, p. 383, 385, whether a particular establishment "is or is not or whether it will become regularly, as distinguished from occasionally, patronized by women" is a question of fact to be determined from the circumstances of a particular case. You have provided no information which would support the conclusion that the tanning operations you have described are ordinarily patronized by women. Hence, even if the tanning operations demonstrated all other characteristics of the practice of cosmetology, I would, on the information before me, be unable to find that they come within the definition found in R.C. 4713.01(A).

It appears that your request was prompted by a concern that, if the activity

of providing exposure to sun lamps for tanning purposes does not constitute the practice of cosmetology, beauty salons are precluded by R.C. 4713.14 from engaging in such practice. R.C. 4713.14 states in pertinent part: "Rooms used as beauty salons shall be used only for the practice of cosmetology services as described in division (A) of section 4713.01 of the Revised Code. . . ." This concern appears, however, to be unfounded. 6 Ohio Admin. Code 4713-9-09 provides: "The use of rooms licensed by the state board of cosmetology for any purpose other than for branches of cosmetology is prohibited unless authorized by the board." Assuming, for purposes of this opinion, that adoption of that rule constituted a valid exercise of the Board's authority under R.C. 4713.02 to adopt rules for carrying out R.C. Chapter 4713, it follows that activities which do not constitute the practice of cosmetology may be carried on in rooms licensed for the practice of cosmetology if specific authorization therefor is provided by the Board. Hence, even though the use of sun lamps for tanning purposes does not constitute the practice of cosmetology, such activity would be allowed in rooms licensed for the practice of cosmetology if specifically authorized by the State Board of Cosmetology. Furthermore, such activity would apparently be allowed in rooms near or adjacent to those licensed for the practice of cosmetology without any authorization by the Board, provided that the rooms used for tanning are not licensed for the practice of cosmetology. See R.C. 4713.01(D) (defining "[b]eauty salon" as "any premises, building, or part of a building" (emphasis added) in which cosmetology is practiced). While some inconvenience might, therefore, result, the conclusion that tanning operations do not constitute the practice of cosmetology would not, as a practical matter, seem to totally preclude such operations from being conducted in conjunction with—if not as part of—a beauty salon.

The conclusion reached herein obviates the need for tanning facilities and personnel to comply with requirements pertaining to beauty salons and cosmetologists. I am not unmindful of the fact that this conclusion may result in a situation in which tanning facilities are not subject to any form of administrative regulation in Ohio. As the information you have provided makes clear, the tanning operation involves some hazards, and caution should be exercised to avoid overexposure of the skin or eyes to the rays of the sun lamps. It might be the case that some sort of administrative regulation of tanning salons or their operators would be advisable for the protection of tanning salon patrons. A determination that regulation would be appropriate is, however, in the province of the General Assembly. My role in this regard is limited to construing the statutes that the General Assembly has adopted. In light of the language of R.C. 4713.01(A), I have no choice but to conclude that the use of sun lamps for tanning purposes does not constitute the practice of cosmetology and, therefore, that the operation of tanning salons does not come within the existing scheme for the regulation of beauty salons and cosmetologists.

It is, therefore, my opinion, and you are hereby advised, that the use of sun lamps to provide a patron with a suntan does not constitute the "practice of cosmetology" within the definition set forth in R.C. 4713.01(A), and, therefore, tanning salons and their operators are not subject to regulation by the State Board of Cosmetology under R.C. Chapter 4713.