

3794.

APPROVAL, BONDS OF HOPEWELL RURAL SCHOOL DISTRICT, LICKING COUNTY, OHIO—\$515.05.

COLUMBUS, OHIO, January 11, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3795.

APPROVAL, BONDS OF OHIO RURAL SCHOOL DISTRICT, GALLIA COUNTY, OHIO—\$3,022.63.

COLUMBUS, OHIO, January 11, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3796.

APPROVAL, BONDS OF ADAMS SPECIAL RURAL SCHOOL DISTRICT, MONROE COUNTY, OHIO—\$674.89.

COLUMBUS, OHIO, January 11, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3797.

CHILD—HAIR MAY BE CUT EITHER BY LICENSED BARBERS OR LICENSED COSMETOLOGISTS.

**SYLLABUS:**

*Children's hair may be cut by either licensed barbers or by licensed cosmetologists, inasmuch as such practice is a part of the ordinary and usual vocation of both.*

COLUMBUS, OHIO, January 12, 1935.

*State Board of Cosmetology, 810 Wyandotte Building, Columbus, Ohio.*

MESDAMES:—I am in receipt of your request for my opinion which reads as follows:

“The State Board of Cosmetology is hereby requesting a formal opinion on the following subject:

There is considerable controversy pertaining to the right of a beauty operator to cut hair, particularly children's hair. Section 1082-1(b) of the Cosmetology Law pertains to the cutting of women's hair in a licensed beauty shop. Neither the Barber Law nor the Cosmetology Law provides specifically for the cutting of children's hair.

Section 1081-7(4) of the Barber Law exempts hairdressers and beauty culturists, insofar as their usual and ordinary vocation and profession is concerned. It has been the practice of beauty schools to teach children's hair cutting and a usual and ordinary practice for a beauty operator to cut children's hair.

Is it your opinion that beauty operators may continue to cut children's hair? Since children are minors and may not exercise their personal rights and, therefore, are subject to the decisions of their parents, is it your opinion that a parent may take a child to either a beauty shop or barber shop for the purpose of having a child's hair cut.”

Section 1081-8, General Code, of the Ohio Barber Law (Section 1081-1 to 1081-27, G. C., inclusive) provides:

“Any one or any combination of the following practices, when done upon the head, face and neck for cosmetic purposes and done for the public generally for pay, either directly or indirectly, shall constitute the practice of barbering:

Shaving or trimming the beard.

*Cutting hair.*

Giving facial and scalp massage or application of oils, creams, lotions or other preparations, either by hand or mechanical appliances.

Singeing, shampooing or dyeing the hair or applying hair tonics.

Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face or neck.

\* \* \* \*

\* \* \*

\* \* \*”

(Italics the writer's.)

Section 1081-8, General Code, provides:

"On and after the taking effect of this act no person shall engage in or attempt to engage in the practice of barbering, either as a barber or as an apprentice barber, without a certificate of registration as a registered barber or registered apprentice issued pursuant to the provisions of this act; and it shall be unlawful to operate a barber shop unless it is at all times under the direct supervision and management of a registered barber."

Section 1081-22, General Code, provides in part:

"Each of the following constitutes a misdemeanor, punishable upon conviction by a fine of not less than twenty-five and not more than two hundred dollars:

(1) The violation of any of the provisions of section 8 (G. C. 1081-8) \* \* \* of this act. \* \* \*"

It is to be noted that it would be a violation of Section 1081-22, General Code, referred to supra, to cut the hair of small children for compensation "without a certificate of registration as a registered barber or registered apprentice," as such would be engaging in the practice of barbering, unless children's hair cutting is exempted under Section 1081-7, General Code, of the Ohio Barber Law. This brings us to a construction of Section 1081-7, General Code, relative to the persons exempt from the provisions of the Barber Law. Section 1081-7, General Code, provides in part:

"The following persons are exempt from the provisions of this act while in the proper discharge of their professional duties:

\* \* \* \* \* \* \* \* \*

4. Hairdressers and beauty culturists, in so far as their usual and ordinary vocation and profession is concerned.

\* \* \* \* \* \* \* \* \*"

The pertinent provisions of the Cosmetology Law are as follows:  
Section 1082-1.

"Words and phrases defined.

\* \* \* \* \* \* \* \* \*

(b) The practice of cosmetology is defined to be and includes any or all work done for compensation by any person, which work is generally and usually performed by so-called hair dressers, cosmetologists, cosmeticians or beauty culturists, and however denominated, in so-called hairdressing and beauty shops, *ordinarily* patronized by women; which work is for the embellishment, cleanliness, and beautification of the women's hair, such as arranging, dressing, curling, waving, permanent waving, cleansing, *cutting*, singeing, bleaching, coloring, or similar work thereon and thereabout, 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, anti-septics, creams or lotions, and of manicuring the nails, which enumer-

ated practices shall be inclusive of the practice of beauty culture, but not in limitation thereof. \* \* \*." (Italics the writer's.)

Sec. 1082-15.

"Nothing in this act shall be construed to prohibit service contemplated by this act in cases of emergency or domestic administration, without compensation; and the following persons shall be exempt from the provisions hereof, namely:

\* \* \*

\* \* \*

\* \* \*

(c) *Barbers, insofar as their usual and ordinary vocation and profession is concerned.*" (Italics the writer's.)

It should be noted that the practice of cosmetology as defined in paragraph (b) of Section 1082-1, General Code, quoted supra, is not limited exclusively to "women" patrons but is "work done for compensation by any person, which work is generally and usually performed by so-called hairdressers, cosmetologists, \* \* \* in so-called hairdressing and beauty shops ordinarily patronized by women." It is also to be observed that the "cutting" of hair is listed as one of the enumerated incidental practices of the trade of a hairdresser or beauty culturist. It is also obvious that the occasional cutting of children's hair would not keep a beauty shop from being "ordinarily patronized by women."

Both the occupation of a barber and a beauty culturist bring the practitioner in contact with the persons of their patrons, and their careless and unsanitary use and application of cosmetic preparations by means of devices or appliances, or the bleaching, coloring or otherwise treating the hair, may injure their patrons or induce diseases. For this reason both the laws regulating barbers and the laws regulating cosmetologists are primarily health measures to protect the public health and to secure the public safety and welfare. On these grounds such regulations have been upheld as constitutional in other states as a legitimate exercise of the police power of the state. *Ritchie vs. People*, 155 Ill. 98, 40 N. E. 454; *Banghart, et al, vs. Walsh*, 339 Ill. 132, 171 N. E. 154. Inasmuch as beauty parlors and cosmetologists are licensed and regulated in this state, and such persons and shops are regularly inspected by agents of the State Board of Cosmetology, women and children obtaining hair cuts in licensed beauty parlors are in some measure protected against both disease and incompetence during the rendition of such services. To hold that no beauty culturist could be authorized to practice the trade of cutting women and children's hair in a licensed beauty shop unless she is a barber, qualified by years of training to shave men and trim their beards, could hardly be regarded as a necessary or reasonable requirement to qualify such beauty culturist to cut and trim the hair of women and children. In fact it has been held in the case of *Banghart vs. Walsh*, referred to supra, that the Illinois Barbers Act denying beauty culturists the right to cut women's hair without a barber's license was a denial of "due process of law."

The difficulty with the question you present is due to the fact that the occupation of a beauty culturist is engaged in primarily by women and is practiced ordinarily upon the persons of women, while the occupation of barbering is made up principally of men and is ordinarily practiced upon the persons of men. However, you state in your request for my opinion that the cutting of children's hair is one of the usual and ordinary practices of

a beautician or hairdresser. I assume this fact to be true. In addition, it is also well known that the cutting of children's hair is one of the usual and ordinary practices of barbers. It is thus apparent that the occupation of barbering and the occupation of a beauty culturist overlap in some respects, in that the cutting or trimming of women and children's hair is included in both occupations, although this is not the main part of either business, but merely an incidental part thereof.

Without further extending this discussion it is my opinion that children's hair may be cut by either licensed barbers or by licensed cosmetologists, inasmuch as such practice is a part of the ordinary and usual vocation of both.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

3798.

BOND—CITY AUTHORIZED TO SELL BONDS IN ANTICIPATION OF  
COLLECTION OF UNPAID ASSESSMENTS, THOUGH PAST DUE,  
WHEN.

*SYLLABUS:*

*Where notes are issued and sold by a city in anticipation of the issue of bonds in anticipation of the collection of special assessments and said notes have become due, bonds may be sold in anticipation of the collection of such assessments as are unpaid, even though a portion thereof are past due.*

COLUMBUS, OHIO, January 12, 1935.

*Bureau of Inspection and Supervision of Public Officers, Columbus, Ohio.*

GENTLEMEN:—I acknowledge receipt of your communication which reads as follows:

“We are inclosing a letter received from the City Auditor of Massillon containing five questions relative to the legal authority of the city to issue bonds now, in order to pay notes issued in 1929 in anticipation of the sale of bonds in anticipation of the collection of special assessments.

After a discussion of this matter with the Auditor and other officials of the city, it develops that there is only one question on which your legal opinion is desired and that is, whether the city may issue bonds in an amount equal to the assessments levied and delinquent, and the assessments levied but not yet due.”

Section 2293-24, General Code, reads as follows:

“Subdivisions shall have power to issue bonds in anticipation of the collection of special assessments. Such bonds may be in sufficient amount to pay that portion of the estimated cost of the improvement or service for which the assessments are levied, and the assessments as paid shall be applied to the liquidation of such bonds. Subdivisions