

laws relating to the status of surety companies and the Workmen's Compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4546.

APPROVAL, BONDS OF WATERLOO RURAL SCHOOL DISTRICT, LAWRENCE COUNTY, OHIO, \$15,000.00 (UNLIMITED.)

COLUMBUS, OHIO, August 15, 1935.

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

4547.

APPROVAL, BONDS OF GEORGETOWN EXEMPTED VILLAGE SCHOOL DISTRICT, BROWN COUNTY, OHIO, \$12,500.00 (LIMITED).

COLUMBUS, OHIO, August 15, 1935.

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

4548.

COSMETOLOGY—OPERATORS MAY BE ISSUED MANAGER'S LICENSE WHEN—QUALIFICATIONS FOR MANAGER'S LICENSE.

SYLLABUS:

1. *Cosmetology operators who are licensed by exemption as operators*

to shampoo and finger-wave hair may not be issued a manager's license in shampooing and finger-waving unless they comply with the provisions of Section 1082-5, paragraphs (e) or (f).

2. *A person licensed as a manager by exemption to do shampooing and finger-waving if she takes the necessary preliminary schooling in other branches of cosmetology and passes the examinations satisfactorily in such branches, may be licensed as an operator in all the branches of cosmetology or may be licensed as an operator in the branches of cosmetology satisfactorily passed by examination and her manager's license to shampoo and finger-wave hair renewed.*

3. *Cosmetology experience prior to September 28, 1933, may not be taken into consideration in the issuance of a manager's license under paragraphs (e) and (f) of Section 1082-5, General Code.*

4. *With reference to exemptions under Section 1082-10, the State Board of Cosmetology should follow a rule of reason dependent upon the intent of the particular applicant and the time prior to the effective date of the Act that her actual practice of cosmetology terminated.*

5. *Whether or not an applicant fails to pass an examination for an operator is not a relevant factor in the determination of whether or not such person is eligible under Section 1082-10, General Code, to exemption.*

6. *It is reasonable for the State Board of Cosmetology to refuse to grant a license by exemption under Section 1082-10 to operators who were actually out of the practice of cosmetology for more than three years prior to September 28, 1933.*

COLUMBUS, OHIO, August 15, 1935.

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

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

“For the purpose of explanation, the following may be classed as beauty practices or branches of cosmetology:

1. Care of scalp—shampooing, massaging
2. Care of hands—Manicuring, Massaging.
3. Care of face—Make-up, eyebrow arching, massaging
4. Care of hair—Bleaching, coloring, etc., finger-waving, permanent waving, marcelling, etc.

According to Section 1082-10 of the Cosmetology Law, any person practicing any one of such branches of cosmetology in an established place of business at the time of taking effect of this Act (September 28, 1933) is entitled to a license to practice as an

operator, manager or instructor, or to act as owner of a beauty shop, as the case may be.

The practices or branches of cosmetology are specified in licenses issued in accordance with Section 1082-8 and 9.

(a) During the past year, several operators were licensed by exemption to shampoo and fingerwave hair.

May they be issued a manager license in shampooing and fingerwaving if they have not worked in an established place of business since September 28, 1934 (1 year after the effective date) in accordance with the requirements of Section 1082-5 (e) or (f)?

(b) If an operator has been licensed as manager by exemption to do shampooing and fingerwaving in March, 1934; about September, 1934 she may enroll in a school for other branches of cosmetology. She may graduate about January 1, 1935 and make application for temporary license and be admitted to next State Board examination. After passing the State Board examination satisfactorily, she may be licensed as an operator.

When license is issued she is still eligible as a manager to do shampooing and fingerwaving.

According to Section 1082-5 (c), (e), (f), after September 28, 1934 she is not entitled to a manager license in the subjects licensed by examination unless she has 1000 hours credit in a school and 18 months experience; or 750 hours credit and three years experience in a licensed shop, in which the majority of the occupations of a cosmetologist are practiced.

May this operator be licensed as a *manager* in all subjects?

Or, may she be licensed as an *operator* in all subjects?

Or, may she be licensed as a *manager* in subjects in which she is licensed by exemption and *operator* in subjects she is licensed by examination?

(c) We have also experienced another situation in which an operator licensed by examination claims past experience (experience prior to September 28, 1933) in a few subjects and requests the Cosmetology Board to take past experience into consideration and issue a manager license without 18 months experience in a licensed beauty shop as required by law (1082-5 (e)).

Is the State Board of Cosmetology permitted to recognize such past experience, since no shop was licensed at that time?

(d) Other cases state that they practiced (1 to 2 years) prior to September 28, 1933, but were not practicing cosmetology at the time of taking effect of the Act (September 28, 1933).

May such persons be considered exempt from examination?

(e) After completion of a course in beauty culture and after taking the State Board examination and failing to pass satisfactorily, such operators claim past experience and apply for license by exemption.

May a license to practice cosmetology be issued?

(f) Sec. 1082-13. 'Any licensed cosmetologist or manicurist who retires from practice may have his or her license restored only upon payment of all lapsed renewal fees; provided, however, that no cosmetologist or manicurist, who has retired from practice for more than three years, may have his or her license restored, without examination.'

If an operator is not permitted to retire from practice more than three years, is it reasonable to refuse to grant license by exemption to operators who have been out of practice for more than three years?

May we have opinions from you on these questions?"

Section 1082-10, General Code, provides *inter alia*:

"All persons who have been engaged in the actual practice of any branch or branches of cosmetology in established places of business or who have taught cosmetology in a bonafide school of cosmetology in this state *at the time of the taking effect of this act* shall, upon application to the board as provided in this act and upon payment of each applicant of a fee of five (\$5.00) dollars be granted, without examination, and without complying with the age or educational requirements, a license to practice or teach *one or more of the branches of cosmetology* as operator, or manicurist, or to act as owner, instructor or manager of a beauty parlor or school of cosmetology as the case may be. * * * " (Italics the writer's.)

Section 1082-8, General Code, provides in part:

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Every license issued by the board shall specify the occupation, or occupations which said license entitles the holder thereof to practice."

Section 1082-9, General Code, provides in part:

“ * * * and every such license shall be *prima facie* evidence of the right of the holder thereof to practice cosmetology *or the branch thereof* which the license designates.” (Italics the writer’s.)

As you state in your request the State Board of Cosmetology has in conformity with the above provisions specified the branch or branches of cosmetology on the face of the license which the particular licensee is permitted to practice. Certainly from a reading of the entire Act an applicant upon being found qualified for some of such work is not entitled to a license to perform all the work covered by the definition of the “practice of cosmetology” in Section 1082-1, General Code. Such a conclusion would be inconsistent with the language of Sections 1082-8, 1082-9 and 1082-10, General Code, *supra*, read as a whole, and subversive of a principal reason and purpose of the entire Cosmetology Act, to safeguard the public from unskilled and incompetent beauty operators. Thus the right to practice may be limited and the licensee may be restricted to those specific branches of cosmetology in which she is found to be qualified.

Section 1082-17, General Code, provides *inter alia*:

“Beauty parlors shall be in charge of and under the immediate supervision of a licensed managing cosmetologist. * * * ”

From the provisions commented on above it would appear that the General Assembly contemplated that particular beauty parlors might have only certain branches of cosmetology practiced therein, and that a person licensed as a manager in a particular branch of cosmetology could only be the manager or supervisor of certain types of beauty shops, depending on the scope of the business conducted therein, this being a necessary consequence of the requirements of the sections of the Cosmetology Act quoted *supra*.

I come now to a consideration of your first question. Section 1082-5, General Code, provides in toto:

“On and after 60 days after the appointment of the examining board by the governor, and thereafter, at stated periods, the board shall hold an examination for the licensing of operator or manicurist, or shall issue licenses, as the case may be, to any person who shall have made application to the board in proper form and paid the required fee, and who are not otherwise exempted under this act as provided in this act and who shall be qualified as follows:

(a) Applicants for a manager cosmetologist license, shall receive a license as such without an examination, providing they are not

less than twenty-one years of age; have practiced in a beauty parlor or school of cosmetology as operators for at least 6 months immediately prior to application; be of good moral character, and shall pay the required fee.

(b) Applicants for an operator's license shall not be less than 16 years of age; have a total experience of at least seven hundred and fifty hours of instruction in the majority of the branches of cosmetology or a proportionate number of hours in any lesser group of subjects related to each other in a school of cosmetology; be of good moral character, and shall have an education equivalent to the eighth grade of public school, and shall pay the required fee.

(c) Applicants for a manicurist's license shall not be less than 16 years of age; be of good moral character; and shall have had at least practical training of 150 hours in an approved school of cosmetology and shall pay the required fee. *Provided, however, that on and after one year from the passage of this act no person shall receive a license as manager of a beauty parlor, except upon the payment of the required fee; and*

(d) Who has not been actually engaged in the practice of manager of a beauty parlor in another state or territory of the United States, or the District of Columbia, for a period of 5 years; or,

(e) Who has not had a training of at least one thousand hours, in the majority of the branches, in a school of cosmetology approved by the board, and *has served as an operator not less than eighteen months in a licensed beauty parlor; or,*

(f) *Who has served less than three years as an operator in a licensed beauty parlor in which a majority of the occupations of a cosmetologist are practiced."* (Italics the writer's.)

It is a well recognized rule that the legislature's intention must be ascertained from the language used in the statute (*Coal Co. vs. Lay*, 37 O. App., 433) and if the statute is free from ambiguity, and clearly expresses the intention of the legislature it cannot otherwise be construed. (*Ohio Savings & Trust Co. vs. Schneider*, 25 O. App., 259; *State ex rel. vs. Brown*, 121 O. S., 329). Consequently as it is now more than a year since the passage of the Cosmetology Act, by virtue of the express prohibition in paragraphs (e) and (f) of Section 1082-5, General Code, the operators mentioned in your first question would not be eligible for a manager's license to shampoo and finger-wave hair. There is one apparent, but not real, exception to these provisions of Section 1082-5, General Code, and that is where a person has already received a license by exemption or examination as manager inasmuch as under Section 1082-13, General Code, such original manager's license, if the person continues in the actual practice of cosmetology, must be renewed

on the payment of the required renewal fee, even though the particular licensee does not possess all of the qualifications laid down under these provisions referred to *supra*.

With respect to your second question the answer is apparent from the discussion *supra* that the operator, if he or she so desires, may be licensed as an operator in all subjects, or she may have her manager's license renewed in shampooing and finger-waving, and obtain an operator's license in the branches of cosmetology in which she has satisfactorily passed an examination.

In answer to your third question, since in paragraphs (e) and (f) of Section 1082-5, General Code, quoted *supra*, the language employed is "in a *licensed* beauty parlor" it is evident that the General Assembly intended the necessary experience to be acquired by the applicant in Ohio *licensed* beauty parlors, and did not mean to take into account past experience in shops which could not, as a matter of fact, have been licensed prior to September 28, 1933, the date the Cosmetology Act went into effect.

Your fourth question involves an interpretation of Section 1082-10, General Code, which provides *inter alia*:

"All persons who *have been engaged in the actual practice* of any branch or branches of cosmetology in established places of business * * * *at the time of the taking effect of this act* (September 28, 1933) shall, upon application to the board as provided in this act and upon payment of each applicant of a fee of five (\$5.00) dollars be granted, without examination, and without complying with the age or educational requirements, a license to practice * * * one or more of the branches of cosmetology as operator, or manicurist, or to act as owner, * * * or manager of a beauty parlor * * * as the case may be. * * *" (Italics the writer's).

Evidently the above provision means persons who were in the *business of* practicing cosmetology when the Cosmetology Act took effect. A literal construction would work much hardship since illustrative cases might be of persons having their employment terminated several months before the taking effect of the Act, who might, on September 28, 1933, have been seeking employment in the business of cosmetology. Or a manager-owner might have sold his or her shop and have been intending to buy another on the effective date of the Act. Consequently it is my opinion, because of a paucity of decisions even remotely related to the proper interpretation of such exemption section, that the State Board of Cosmetology must simply follow a rule of reason or common sense dependent on the intent of the particular applicant and the time prior to the effective date of the Act that their practice of cosmetology terminated, or, in other words, with reference to the time element a

"reasonable length of time." It is thought that a more categorical answer to your fourth question cannot be given.

With respect to your fifth question from a legal standpoint the fact that the applicant took the examination and failed to pass it would not be a factor in the consideration of the question of whether or not such applicant should be exempted under Section 1082-10, General Code. In other words, either the applicant is or is not entitled to an exemption under the Act and the taking of the examination is not a relevant factor to be considered.

The answer to your sixth question is unquestionably in the affirmative.

Consequently in specific answer to your inquiries, it is my opinion that:

1. Cosmetology operators who are licensed by exemption as operators to shampoo and finger-wave hair may not now be issued a manager's license in shampooing and finger-waving unless they comply with the provisions of Section 1082-5, paragraphs (e) or (f).

2. A person licensed as a manager by exemption to do shampooing and finger-waving if she takes the necessary preliminary schooling in other branches of cosmetology and passes the examinations satisfactorily in such branches, may be licensed as an operator in all the branches of cosmetology or may be licensed as an operator in the branches of cosmetology satisfactorily passed by examination and her manager's license to shampoo and finger-wave hair renewed.

3. Cosmetology experience prior to September 28, 1933 may not be taken into consideration in the issuance of a manager's license under paragraphs (e) and (f) of Sections 1082-5, General Code.

4. With reference to exemptions under Section 1082-10, The State Board of Cosmetology should follow a rule of reason dependent upon the intent of the particular applicant and the time prior to the effective date of the Act that her actual practice of cosmetology terminated.

5. Whether or not an applicant fails to pass an examination for an operator is not a relevant factor in the determination of whether or not such person is eligible under Section 1082-10, General Code, to exemption.

6. It is reasonable for the State Board of Cosmetology to refuse to grant a license by exemption under Section 1082-10 to operators who were actually out of the practice of cosmetology for more than three years prior to September 28, 1933.

Respectfully,

JOHN W. BRICKER,
Attorney General.