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STATE BOARD OF COSMETOLOGY—REQUIRED TO DETERMINE IN EACH CASE WHETHER OR NOT, AN APPLICANT FOR A COSMETOLOGIST'S LICENSE IS OF GOOD MORAL CHARACTER—§4713.04, R.C.

SYLLABUS:

The state board of cosmetology is required to determine in each case whether or not, according to its best judgment, an applicant for a cosmetologist's license is of good moral character, and the fact that an applicant was at one time admitted to a public or private correctional institution or the fact that an applicant was at one time an inmate of the state reformatory for women, would not of itself bar such an applicant from being admitted to examination for such license on the grounds that such applicant is not of good moral character.

Columbus, Ohio, March 24, 1960

Lily C. West, Chairman, State Board of Cosmetology
Columbus, Ohio

Dear Madam:

I have before me your request for my opinion which reads:

“We are requesting a formal opinion on the question of whether this Board can accept for examination and issue a license to persons receiving their cosmetology training in correctional institutions.

“Section 4713.04, Revised Code of Ohio states:

“(A) Applicants for a cosmetologist's license shall be at least sixteen years of age, *of good moral character*, (emphasis ours) have the equivalent of an Ohio public school eighth grade education, and have received a total of not less than twelve hundred fifty hours of instruction in the several branches of cosmetology, in a licensed school of cosmetology in Ohio.”

“At the present time we have one school, Mary Crest, Independence, Ohio, a Catholic correctional school for girls of approximately high school age, which has been licensed for several years by this department and has a beauty school training course as part of its curriculum and from which students are certified and accepted for the Ohio State Cosmetology Examination.

"The Delaware School for Girls at Delaware, Ohio, has talked with the previous boards as to the requirements for establishing a school at that institution to the point that they purchased several thousands of dollars worth of equipment some time before 1958. During 1958, as a part of the previous board I discussed the establishment of the school with them and this year accepted an application with the idea of completing all necessary arrangements for a training school. This plan was not carried out before this time because of their lack of budget to proceed.

"The thought has continued to concern as to whether this Board can, in view of the above quoted statute, establish such training schools and permit the students to become licensed as cosmetologists under the laws of Ohio.

"Today I received a telephone call from Miss Martha Wheller, Superintendent of the Marysville School at Marysville for information as to whether we could establish a school in that institution and license the successful applicants for examination.

"It appears to be a good and humane way of rehabilitation for girls who will have to make a living upon their release from such institutions and we would be willing to cooperate if we have a legal right to do so.

"Should you rule adversely on this question will the already established Mary Crest School have to be dissolved?"

Section 4713.04, Revised Code, setting forth the qualifications for admission to examination for a cosmetologist's license, reads in part:

"(A) Applicants for a cosmetologist's license shall be at least sixteen years of age, *of good moral character*, have the equivalent of an Ohio public school eighth grade education, and have received a total of not less than twelve hundred fifty hours of instruction in the several branches of cosmetology, including subjects relating to sanitation and sterilization, in a licensed school of cosmetology in Ohio, * * *" (Emphasis added)

Section 5141.31, Revised Code, pertaining to the girls' industrial school, provides:

"The girls' industrial school shall be maintained for the industrial, *intellectual, and moral training* of those admitted to its care under sections 2151.01 to 2151.54, inclusive, of the Revised Code. No girl under twelve nor over eighteen years of age at the time of hearing in the juvenile court, nor any girl coming before the court because of dependency alone shall be committed to the school. Only such girls as have normal mental and physical capacity for intellectual and industrial training may be committed and admitted to the institution." (Emphasis added)

Section 5141.34, Revised Code, states, among other things, that the superintendent of the girls' industrial school shall:

“* * *discipline, govern, instruct, employ, and use her best endeavors *to reform the girls* in such manner as, while preserving their health and prompting the proper development of their physical system, *will secure the formation of moral and industrious habits* and regular thorough progress and improvement in their studies, trades, and employments.” (Emphasis added)

Authority of the juvenile court to commit girls to correctional institutions maintained by certified private organizations and agencies, is contained in Section 2151.35 (B), Revised Code.

It is quite clear from the foregoing that girls are committed to correctional schools not as a punishment but for the purpose of reformation, moral regeneration, and for such industrial and intellectual instruction and training as will enable them, upon their release, to become upright and useful members of society. It follows that such girls are not to be considered as criminals, or prisoners, but merely as wards of the state. In *State ex rel. Wilson v. Stiles*, 12 Ohio Decisions (N.P.), 338, it is stated in the first headnote:

“The Girls' Industrial Home is not a penal institution, but a school, in which the state should use its best endeavors for the reformation of incorrigible girls. The fact that the girls are subjected to restrictions does not make the institution a prison.”

Sections 5143.21 to 5143.25, inclusive, Revised Code, contain provisions regarding the reformatory for women. Pursuant to Section 5143.21, Revised Code, such reformatory is to be used for the detention of all females over sixteen years of age, convicted of a felony and sentenced to such reformatory, and for the retention of such females as may be transferred to it from the girls' industrial school. Of particular interest here is Section 5143.25, Revised Code, which reads:

“The department of mental hygiene and correction *may establish academic and vocational schools* at the reformatory for women and may provide the necessary buildings and equipment and employ the necessary instructors for such purposes. *The inmates shall be instructed in academic and vocational subjects of such character as may be required to fit them for self-support upon being released from the institution.* Such school shall be maintained at least ten months each year and be under the direction of a competent principal and staff of instructors. The employ-

ment of all teachers shall be subject to sections 5119.50 and 5119.51 of the Revised Code." (Emphasis added)

What I have said in regard to the purpose of girls' industrial schools apparently also applies to the women's reformatory, to the extent that such reformatory exercises the discretionary authority granted to it under Section 5143.25, *supra*. The desire of the superintendent of women's reformatory at Marysville, Ohio, to establish a school of cosmetology, mentioned in your letter, is clearly in accord with the provisions of such section.

It is quite apparent that the statutory requirement as to good moral character of applicants for a cosmetology license must be viewed in the light of the quoted provisions of Sections 5143.31 and 5141.34, *supra*, and the decision of court in the *Stiles case*, *supra*, with respect to girls in correctional schools. In the case of women who have been convicted of a felony and committed and are serving sentences in the reformatory for women, such requirement must be determined by giving due consideration to the provisions of Section 5143.25, *supra*.

The central purpose of statutes dealing with girls and women of both classes is obviously identical, although statutes in regard to girls in industrial schools put special emphasis on "moral training" and on endeavors to secure the formation of "moral" and industrial habits, whereas sections in regard to women's reformatory do not speak of moral training as such but provide for instruction in academic and vocational subjects of inmates, with a view of making such inmates capable of supporting themselves after they have paid their debt to society. I believe that in such instruction, together with its avowed purpose, moral training is implicit, although not expressed. Accordingly it may be said that the methods no less than the aims in both situations are essentially the same. The same conclusion is indicated when practical consequences of the quoted sections are given full consideration. It clearly would not make sense to train girls in an industrial school and inmates in the reformatory for women in any vocation or trade, if they are to be returned to society with the stigma of presumption that they are not of a good moral character and so be unable to practice the trade which they have learned. I believe the presumption is to the contrary, in view of the expressed purpose of the above cited sections of the Revised Code.

Having reached this conclusion, the solution to the question here under consideration should apparently be sought within the framework of

practice and experience of members of the state board of cosmetology in officially dealing with such question generally. This does not mean that the board should close its eyes to the fact that an applicant has been confined in an industrial school or the reformatory for women. Although the board is not required to investigate and scrutinize the record of such applicants, it surely may do so—as it may investigate and scrutinize the record of other applicants—and consider each case on the basis of factual information so obtained. The final responsibility of course rests with the state board of cosmetology. Therefore, your question as to what constitutes good moral character requires consideration. In *Raabe v. State*, 7 Ohio App., 119, it was decided that failure of the statute there considered to define what constitutes “good moral character” or to furnish a standard for determining it does not render the statute invalid for indefiniteness and uncertainty. In the course of its opinion the court stated at page 128:

“* * *This phrase ‘good moral character’ has been used so many times in statutes and decisions of the courts that it would seem to be unnecessary to attempt any definition. Indeed the term defines itself as accurately as the legislature could define it by any other terms it might employ.”

In *Rose v. H. H. Baxter*, 7 N.P., (N.S.), 132, (motion to certify overruled, 81 Ohio St., 522) the court was concerned with the reverse of “good moral character,” namely, with the meaning of “gross immorality.” In the first headnote of that case it is stated:

“The expression ‘gross immorality’ has acquired through long use a standard of interpretation and understanding that prevents its being longer subject to the charge of being indefinite, and the provisions of the act establishing a state board of medical examiners which authorizes the board to revoke a certificate for gross immorality is, therefore, not void for want of indefiniteness, or because the question of what constitutes gross immorality is left to the caprice of individual members of the board.”

Assuming that “good moral character” and “moral conduct” are substantially analogous terms, it might be said that *Hughey v. Bradrick*, 39 Ohio App., 486, probably comes as near to a definition as may be found in a reported case in Ohio or elsewhere. After defining “moral turpitude” the court, at page 488, described moral conduct as conduct:

“that conforms to the generally accepted rules which *society* recognizes should govern everyone in his social and commercial

relations with others, regardless of whether such rules are enforceable as legal obligations.” (Emphasis added)

Accepting the quoted descriptive definition as the best available yardstick for reaching a conclusion regarding what constitutes good moral character, it follows that a public body, such as the state board of cosmetology, of necessity must speak for society, and thus determine each case in the light of experience and according to its best judgment, on the facts before it, in conformity with the requirement contained in Section 4713.04, Revised Code.

It is therefore my opinion and you are advised that under Section 4713.04, Revised Code, the state board of cosmetology is required to determine in each case whether or not, according to its best judgment, an applicant for a cosmetologist’s license is of good moral character, and the fact that an applicant was at one time admitted to a public or private correctional institution or the fact that an applicant was at one time an inmate of the state reformatory for women, would not of itself bar such an applicant from being admitted to examination for such license on the grounds that such applicant is not of good moral character.

Respectfully,

MARK MCELROY

Attorney General