

2572.

COSMETOLOGY—OPERATOR, EMPLOYEE, INDIVIDUAL,
LESSEE, OWNER OR MANAGER OF BEAUTY PARLOR
—STATUS AS TO LICENSE—SECTION 1082-16 G. C.

SYLLABUS:

1. *Cosmetology operators, leasing space in a duly licensed beauty parlor, but acting as employes of the owner or manager thereof, are not required under the provisions of the Cosmetology Act, to obtain shop licenses.*

2. *Cosmetology operators, leasing space in a duly licensed beauty parlor, but dispensing cosmetology services as individuals, free from any interference or supervision of the owner or manager thereof, are engaged in the operation of a separate and distinct beauty parlor and are, therefore, required under the provisions of Section 1082-16 of the General Code, to obtain shop licenses.*

COLUMBUS, OHIO, June 9, 1938.

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

DEAR MESDAMES: This is to acknowledge receipt of your recent communication wherein you request my opinion on the following question: Are cosmetology operators, leasing space in a duly licensed beauty parlor, required under the provisions of the Cosmetology Act, to obtain shop licenses?

Section 1082-16 of the General Code provides as follows:

“Within 60 days after the appointment of the board as provided in Section 3 (G. C. Sec. 1082-3) of this act, and annually thereafter during the month of June, every person, firm or corporation conducting or operating or desiring to operate a beauty parlor, in which any one, or any combination of the occupations of a cosmetologist are practiced; and every person, firm or corporation conducting or operating or desiring to conduct or operate a school of cosmetology, in which any one, or any combination, of the occupations of cosmetologist are taught, shall apply to the board for a license, through the owner, manager or person in charge, in writing upon blanks prepared and furnished by the board. Each application shall contain proof of the particular requisites for license provided for this act and shall be verified by the oath of the maker.

Upon receipt by the board of the application, accompanied by the required fee, the board shall issue to the per-

son, firm or corporation so applying and otherwise qualifying under this act, the required license.

The annual license fee for a school of cosmetology shall be one hundred (\$100.00) dollars.

The annual license fee for a beauty parlor shall be five dollars (\$5.00)."

The above section contains the only provision in the Cosmetology Act relating to the issuance of shop licenses. Consequently, in the determination of the question here considered, we must be governed entirely by the provisions thereof.

A reading of Section 1082-16, *supra*, readily discloses that the provisions thereof impose upon every person, firm or corporation conducting or desiring to conduct a beauty parlor the mandatory duty of obtaining a shop license. Thus, if it is determined that cosmetology operators, by leasing space in a duly licensed beauty parlor, are engaging in the operation of separate and distinct beauty parlors, it is quite evident that they by so doing, become amenable to the provisions of Section 1082-16, *supra*, and, therefore, are obliged to obtain shop licenses.

However, a determination of the question which you have presented, as well as other analogous questions which you will no doubt in the future be called upon to solve, is dependent entirely upon a determination of fact which must be made in each particular case called to your attention. This, due to the very obvious reason that cosmetology operators, by leasing space in a duly licensed beauty parlor, will not in every instance be engaged in the operation of a separate and distinct beauty parlor. The situation is readily conceivable where cosmetology operators, notwithstanding the fact that they have leased space in a duly licensed beauty parlor, will nevertheless be dispensing cosmetology services as employes of the owner or manager in charge. It is quite obvious that such operators would not be engaged in the operation of beauty parlors, and, therefore, would not be required to obtain shop licenses.

However, a different picture is presented in those instances where cosmetology operators, by leasing space in a duly licensed beauty parlor, will be dispensing cosmetology services as individuals, free from any interference or control of the owner or manager in charge. In such instances, it is clear to my mind that such operators would be engaged in the operation of separate beauty parlors and, therefore, would under the provisions of Section 1082-16, *supra*, be required to obtain shop licenses.

Thus, it will be readily seen from the foregoing that an attempt has been made to set forth the test that must be applied not only to the question here considered, but to other similar questions which will be presented to you for decision in the future. The determination of each case will be dependent entirely upon whether or not cosmetology operators, after leasing space in a duly licensed beauty parlor, contemplate the dispensing of cosmetology services as individuals, free from any interference or control of the owner or manager thereof. Upon determination of this question will be found the proper solution to each particular case.

It is, therefore, my opinion in specific answer to your question that: (1) Cosmetology operators, leasing space in a duly licensed beauty parlor, but acting as employes of the owner or manager thereof, are not required under the provisions of the Cosmetology Act, to obtain shop licenses. (2) Cosmetology operators, leasing space in a duly licensed beauty parlor, but dispensing cosmetology services as individuals, free from any interference or supervision of the owner or manager thereof, are engaged in the operation of a separate and distinct beauty parlor and are, therefore, required under the provisions of Section 1082-16 of the General Code, to obtain shop licenses.

Respectfully;

HERBERT S. DUFFY,
Attorney General.

2573.

THE MUSKINGUM WATERSHED CONSERVANCY DISTRICT
--EXPENSES--ENTERTAINMENT--TRIPS--PUBLIC OFFICIALS--PRIVATE ORGANIZATIONS--CANNOT BE
TAKEN FROM PUBLIC FUNDS OF DISTRICT.

SYLLABUS:

Payments of expenses incurred in entertaining public officials and private organizations on general inspection trips made over The Muskingum Watershed Conservancy District can not properly be taken from public funds of the district.

COLUMBUS, OHIO, June 9, 1938.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: This will acknowledge the receipt of your recent communication. You requested an opinion as to the legality of certain expenditures made by The Muskingum Watershed Conservancy Dis-