driving a motor vehicle which is owned by such subdivision upon business of the municipality. Your question raises the further point that such vehicle is not owned by the municipality. It is true that section 3714-1 being in derogation of the common law, should not be extended beyond the plain import of the language used in the statute. However, it is to be noted that the statute uses the language "in the operation of any vehicle upon the public highways." The fact that the person driving may not be allowed any compensation is indicative that he is not driving his car upon business of the municipality. The statute requires that the person be engaged in the business of the municipality. Thus, the statute does not create absolute liability against the municipality but rather a liability based upon the doctrine of *respondent superior.* However, in your letter you assume that such vehicle is driven upon the busineess of the municipality. In the interpretation of any statute, it is wise to inquire into the evil that the legislature intended to remedy by the enactment of the new law. Clearly, as pointed out in the first part of this opinion, the legislature intended to protect persons injured by employes of a municipality through the negligence of such employes. It is the affairs of the municipality that causes these employes to be in a position where it is possible for them to injure innocent people. The language is broad enough in itself to cover citizens where the car is privately owned, and together with the obvious intent of the legislature, it would follow that the municipality would be liable in the cases presented in your inquiry.

In this connection, it might be well to point out that this opinion in nowise is intended to be a limitation on the non-liability of a municipal corporation for the acts of policemen and firemen as expressly contained in the proviso of section 3714-1, General Code.

It is therefore my opinion, in specific answer to your question, that a municipal corporation is liable in damages for injury or loss to persons and property sustained through the operation of his privately owned automobile by an officer or employe of the corporation when engaged upon the business of the municipal corporation in the scope of his employment, whether or not such official or employe was receiving any allowance or compensation for the use of his own car on business of the municipality.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2185.

COSMETOLOGY ACT—SANITARY AND HEALTH RULES ADOPTED BY COSMETOLOGY BOARD NOT APPLICABLE TO FREE DEMONSTRATORS WHEN—SCHOOL OF COSMETOLOGY DEFINED.

SYLLABUS:

Where manufacturers of cosmetic creams or permanent wave machines employ demonstrators, who give freee facials and free demonstrations for the purpose of selling such products and appliances, such demonstrators are not engaged in the practice of cosmetology as defined by the Cosmetology Act, Sections 1082-1 *to* 1082-23, *inclusive, of the General Code, and hence are not amenable to the sanitary and health rules promulgated by the State Board of Cosmetology, nor are such persons conducting or operating a "school of cosmetology."*

COLUMBUS, OHIO, January 19, 1934.

MRS. FRANCES DIAL, *Chairman State Board of Cosmetology, Columbus, Ohio.*

DEAR MADAM:—I am in receipt of your recent communication which reads as follows:

"The members of the State Board of Cosmetology request an informal opinion on the following items:

Section 1082-1 (b) of the General Code of Ohio.

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 hairdressers, cosmetologists, cosmeticians or beauty culturists, and however denominated, etc.

Section 1082-1 (c) of the General Code of Ohio.

The words 'cosmetologist' or 'cosmetician,' or 'beauty culturist,' or 'hairdresser,' whichever word is used, are defined as any person who for *compensation* engages in the practice of cosmetology.

In this connection the following problems have been brought to our attention:

1. Manufacturers who sell face creams direct to the customer employ, or contact salesladies, who call homes by telephone, asking the housewife to allow them to call at her home and give her a free facial, the cost of which is approximately $1.00 to $1.25 in the average shop. They claim to analyze the skin and diagnose the skin condition, and then recommend the types of creams required for such a skin. The patron is then instructed how to proceed with a facial treatment. The customer may, or may not feel obligated to buy the creams recommended, which may amount to $4.00 to $7.00, or more.

Under this Act there is a Section 1082-3 requiring sanitary rules for cosmetologists in Ohio. Does this apply to the practice mentioned above?

We believe that this method of selling creams could be more satisfactorily continued, if these ladies practicing cosmetology for the sale of creams establish a place of business which could be inspected as required under the sanitary rules adopted by this Board.

2. There is another practice of a different nature that has been called to our attention.

The usual dealer in cosmetic and beauty shop supplies, in selling permanent wave machines, goes to the shop and demonstrates the use of his machine on a patron in that shop.

Other dealers go to large companies, where a number of girls are employed, and solicit girls for free permanent waves, the cost of which in ordinary shops is $5.00 to $10.00. These waves are given for teaching purposes, called 'Brush up Courses,' and also for teaching individuals who are not cosmetologists. Since schools of cosmetology are now to be licensed, this matter has been called to our attention; also, individuals so taught are applying for Operator License, considering themselves qualified.

May persons selling merchandise only demonstrate the use of the product or merchandise to be sold and not teach the art of cosmetology?"

Section 1082-1 paragraph (b) of the General Code of Ohio, to which you refer in your inquiry, reads in part as follows:

> "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 hairdressers, cosmetologists, cosmeticians or beauty culturists, and however denominated, in so-called hairdressing and beauty shops, ordinarily patronized by women; * * *"

Paragraph (c) reads as follows:

> "The words 'cosmetologist' or 'cosmetician' or 'beauty culturist' or 'hairdresser,' whichever word is used, are defined as any person who, for compensation, engages in the practice of cosmetology."

Under Section 1082-3 of the General Code, it is the duty of the Board of Cosmetology "to adopt such sanitary rules as may be authorized by the State Department of Health with particular reference to the precautions to be employed to prevent the creating or spreading of infectious or contagious diseases in beauty parlors or schools of cosmetology, or in the practice of cosmetology." Under this latter section, 1082-3, it is self-evident that the rules promulgated or adopted by such State Board of Cosmetology are for the persons in schools of cosmetology or in the practice of cosmetology as defined by the Cosmetology Act Sections 1082-1 to 1082-23, inclusive, of the General Code of Ohio. Hence it is necessary in order to determine whether or not these sanitary rules for cosmetologists apply to agents of manufacturers of cosmetic creams, to ascertain whether or not such agents of such manufacturers are engaged in the practice of cosmetology as defined by paragraph (b) of Section 1082-1 of the General Code, i. e., if such agents are practicing cosmetology as defined by the Cosmetology Act they must comply with the reasonable sanitary and health rules for cosmetologists in Ohio, whereas if they are not practicing cosmetology as defined by the Cosmetology Act, they do not have to comply with such rules.

Although the practice of cosmetology in its unrestricted sense covers all of the operations which you have set forth in your inquiry, it must be borne in mind that the practice of cosmetology for the purposes of the Cosmetology Act and for your supervision is limited to its definition as given in Section 1082-1, paragraph (b) of the General Code of Ohio. Therein it is stated that "the practice of cosmetology is defined to be and includes any or all work done *for compensation* by any person," and hence it has a more restricted meaning than its ordinary connotation. It must, therefore, be decided, in order to answer your first question, whether such salesladies of facial creams, etc., who give free facials for the purpose of demonstrating their creams are practicing cosmetology "for compensation." From the facts you state there is no charge for the demonstration of the facial or the creams used for such demonstration, and such demonstrations are only for the purpose of advertising and selling the creams. A prospective customer, under such set of facts, certainly does not pay for the demonstration facial or the face creams used in such a demonstration if she does not later decide to buy the creams proffered for sale. Moreover, even if such customer does buy such creams she does not pay for the demonstration facial or the creams used in such demonstration, but pays for the creams to be ordered. Consequently it is my opinion that under the state of facts outlined in your first question, such salesladies selling creams are not practicing cosmetology as defined by paragraph

(b) of Section 1082-1 of the General Code of Ohio and hence are not amenable to the sanitary and health rules adopted by your State Board of Cosmetology.

With respect to your second inquiry I assume that the dealer in selling permanent wave machines does not charge for the demonstration, i. e., they give free permanents and also demonstrate to individuals the use of such a permanent waving machine in order to sell such machine. Under such predicated assumption of facts it is my opinion that they are not practicing the art of cosmetology "for compensation." It is also my opinion that they are not "conducting or operating a school of cosmetology" within the provisions of the Cosmetology Act. Although there is no definition of a "school of cosmetology" given in the Cosmetology Act the following provision in Section 1082-17 of the General Code helps to shed light on the meaning of a "school of cosmetology." This reads as follows:

> "Every beauty parlor *exacting a fee for teaching of any branch of cosmetology* shall be classed as a school of cosmetology within the meaning of this section * * *" (Italics the writer's.)

It is my opinion, and evidently the intent of the legislature, that there must be an exaction of a fee for the teaching of any branch of cosmetology as a requisite of a "school of cosmetology" within the purview of the Cosmetology Act.

I find the following provision in Section 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; * * *"

It is my opinion that this provision was not essential inasmuch as the other provisions of the Act exclude its necessity, but such provision was enacted by the legislature "out of an abundance of caution" to safeguard such practices.

Although it is my opinion that the practice of cosmetology as defined by your act and that schools of cosmetology necessitate "compensation" or "exaction of fees," any subterfuge, such as forms of "tipping" is "compensation" and such indirect method of practicing cosmetology would be covered by the Cosmetology Act.

However, specifically answering your inquiries, it is my opinion that where manufacturers of cosmetic creams and permanent wave machines employ demonstrators, who give free facials and free demonstrations for the purpose of selling such products and appliances, such demonstrators are not engaged in the practice of cosmetology as defined by the Cosmetology Act, Sections 1082-1 to 1082-23, inclusive, of the General Code, and hence are not amenable to the sanitary and health rules promulgated by the State Board of Cosmetology, nor are such persons conducting or operating a "school of cosmetology."

Respectfully,

JOHN W. BRICKER,

Attorney General.