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COSMETOLOGY, BOARD OF—RULES AND REGULATIONS—  
APPLICATION TO STUDENTS ENROLLED PRIOR TO 7/25/49  
—LICENSES—§§4713.04, 4713.11 R.C.

SYLLABUS:

1. The provisions of Section 4713.04, Revised Code, to the effect that the board of cosmetology, when determining total hours of instruction required of applicants for a cosmetology license, shall not take into account more than eight hours of instruction per day nor instruction received more than five years prior to the time the application is filed, are applicable to all persons who became students of cosmetology after July 25, 1959, as provided in Section 4713.11, Revised Code.

2. The provisions of Section 4713.04, Revised Code, have no application to persons who were students in a school of cosmetology on or before July 25, 1949, the qualifications of such persons for examination being governed by the provisions of Section 4713.11, Revised Code, that they shall "receive a license upon passing the same, under requirements in effect, prior to such date, upon due application made and payment of the required fee."

Columbus, Ohio, April 21, 1959

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

Dear Madam:

In your request for my formal opinion you state:

"The question pertains to the credit to be allowed to former students of cosmetology schools who have discontinued their studies and now desire to return to school and be allowed the credits they had at the time of discontinuing.

"Section 4713.04, Revised Code, contains this language under 'Qualifications':

"\* \* \* When determining the total hours of instruction received by an applicant for a cosmetologist's license, the state board of cosmetology shall not take into account more than eight hours of instruction per day nor instruction received more than three years prior to the time that an application is filed."

"Section 4713.11, Revised Code, contains this language under the heading 'Renewals', last sentence:

“\* \* \* All persons who, on July 25, 1949, or before, were students in a school of cosmetology, shall be admitted to examination and receive a license upon passing the same, under requirements in effect, prior to such date, upon due application made and payment of the required fee.’

“Will you kindly determine the policy this board shall follow under these conflicting sections?”

The first question to be determined, it seems to me, is whether the conflict between the provisions of Sections 4713.04 and 4713.11, Revised Code, which you cite in your letter, is real or only apparent. The two sections were passed by the Legislature at the same time, namely on July 25, 1949. A minor amendment of Section 4713.11, Revised Code, was made in 1955, without, however, affecting the provision with which we are concerned here.

Placing the apparently conflicting provisions of the two sections side by side and examining them in context of the entire act of which they constitute a part, it becomes clear that the Legislature separated the students of cosmetology into two distinct groups or classes, to-wit: those who were to take up the study of cosmetology *after* July 25, 1949, and those who were attending schools of cosmetology *on or before* that date. The apparent conflict is thus eliminated, with the results that, insofar as the letter of the statutory provisions under consideration is concerned, no interpretation appears to be necessary.

What your letter indicates is that you question the practical results to which a literal application of the two provisions must inescapably lead. In other words, is it reasonable to suppose that persons who were students of cosmetology on or before July 25, 1949, shall be admitted to examination, at this time, under requirements in effect, prior to such date? These requirements, recited in Section 1082-5, (b), General Code (115 Ohio Laws, 326), were adopted in 1933, when the cosmetology act was first enacted, are:

“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 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.”

(Emphasis added)

The same sections of the General Code from which Section 4713.04, Revised Code, is derived, was amended in 1949 (123 Ohio Laws 796), and it states the required qualifications of an applicant for a cosmetologist license after July 25, 1949, as follows:

“(a) Applicants for a cosmetologists license shall be at least 16 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 1250 hours of instruction*, unless changed by an act of the General Assembly in the several branches of cosmetology, *including subjects relating to sanitation and sterilization, in a licensed school of cosmetology in Ohio*. When determining the total hours of instruction received by an applicant for a cosmetologist license, the board shall not take into account more than eight hours of instruction per day nor instruction received more than three years prior to the time that an application is filed.” (Emphasis added)

There can be no doubt but that the General Assembly intended to free students attending schools of cosmetology on or before July 25, 1949 of the more stringent requirements contained in the amended Section 1082-5, General Code, which is now Section 4713.04, Revised Code. There being no express limitation as to the length of time to which this special indulgence toward such students is to extend, we may next inquire whether there is some provision elsewhere in the statutes which implies such limitation. The pertinent part of Section 4713.11, Revised Code, provides:

“\* \* \*”

“Any licensed cosmetologist, managing cosmetologist, or manicurist who retires from practice may have his license restored only upon payment of all lapsed renewal fees; provided that no cosmetologist, managing cosmetologist, or manicurist, who has retired from practice for more than two years, may have his license restored, without passing an examination *as provided in section 4713.06 of the Revised Code*. All persons who are or have been licensed as cosmetologists, managanig cosmetologists, or manicurists prior to July 25, 1949, shall be relicensed as such without examination and subject to the requirements in effect prior to that date, by making application for such license on forms provided by the board and paying the required fee; *except that such person whose license has lapsed for more than two years shall have same restored only by passing an examination as provided in this section*. \* \* \*” (Emphasis added)

Section 4713.06, Revised Code, describes what "type of examination" applicants for a cosmetology license shall be subject to, namely, practical, written or oral, in the event their licenses granted before July 25, 1949, have lapsed for more than two years, *but it has no bearing on the qualifications of such applicants.* The further fact that in the absence of such lapsing for more than two years, cosmetologists, managing cosmetologists, or manicurists who were licensed before July 25, 1949, are to be granted licenses *without an examination*, by merely paying the required fee, clearly shows that the indulgent attitude which the legislature has manifested toward those who were students of cosmetology on or before July 25, 1949, is being shown all other persons who are subject to the licensing provisions of the cosmetology act, if their licenses were obtained on or before that date.

This being true, any attempt to rationalize the literal provisions as to the qualifications of those who were engaged in the study of cosmetology before the passage of the Section 4713.11, Revised Code, in its present form, and thereby confined their applicability to some reasonable time limit, would be no more than an exercise in futility. The General Assembly may have believed failure to provide such a limitation would never create a problem because it assumed that students who might discontinue their studies would resume and complete them within a reasonably short period of time. This, however, is mere speculation, and cannot serve as a means of avoiding the express provisions of the statute in question.

In 37 Ohio Jurisprudence, Statuts, Section 508, p. 827, it is stated:

"A law which does not transcend the limits of legislative power may not be held invalid by the courts because they may question the wisdom or reasonableness of the enactment, or its expediency, propriety, utility, or convenience. In such case, the law may not be declared void merely on the ground that it is 'mischievous' or 'immoral.' For such purpose, the courts may not consider whether the plan adopted is the most appropriate or the best calculated to accomplish its purposes. The correction of such evils, if they exist, must be sought by an appeal to the legislature itself."

Accordingly, it is my opinion and I advise you:

1. The provisions of Section 4713.04, Revised Code, to the effect that the board of cosmetology, when determining total hours of instruction required of applicants for a cosmetology license, shall not take into

account more than eight hours of instruction per day nor instruction received more than five years prior to the time the application is filed, are applicable to all persons who became students of cosmetology after July 25, 1949, as provided in Section 4713.11, Revised Code.

2. The provisions of Section 4713.04, Revised Code, have no application to persons who were students in a school of cosmetology on or before July 25, 1949, the qualifications of such persons for examination being governed by the provisions of Section 4713.11, Revised Code, that they shall "receive a license upon passing the same, under requirements in effect, prior to such date, upon the application made and payment of the required fee."

Respectfully,

MARK McELROY

Attorney General