

OPINION NO. 89-076**Syllabus:**

1. The requirements of R.C. 4713.14 and 7 Ohio Admin. Code 4713-5-07 apply to single operator beauty salons. (1938 Op. Att'y Gen. No. 1862, vol. I, p. 226, syllabus, paragraph one, overruled).
2. The requirements of R.C. 4713.14 and 7 Ohio Admin. Code 4713-5-07 apply to beauty salons in which the only service provided is the manicuring of nails.

To: Robert W. Schroeder, Chairman, Ohio State Board of Cosmetology, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, October 16, 1989

I have before me your request for my opinion on the following questions:¹

1. Do the provisions of Ohio Revised Code Section 4713.14 and Ohio Administrative Code Section 4713-5-07 require that single operator beauty salons be in charge of and supervised by a managing cosmetologist?
2. Do the provisions of Ohio Revised Code Section 4713.14 and Ohio Administrative Code Section 4713-5-07 require a nail salon to be in charge of and under the immediate supervision of a licensed managing cosmetologist?

Your first question asks whether the provisions of R.C. 4713.14 and 7 Ohio Admin. Code 4713-5-07 apply to single operator beauty salons. A member of your staff has indicated that a "single operator beauty salon" is one in which only one person engages in the practice of cosmetology.

"Beauty salon" is defined by R.C. 4713.01(D) as "any premises, building, or part of a building, in which any branch of cosmetology, except the occupation of a manicurist when carried on in a barber shop licensed under Chapter 4709. of the Revised Code, or the occupation of a cosmetologist is practiced." R.C. 4713.14(A) provides that "[b]eauty salons shall be in charge of and under the immediate supervision of a licensed managing cosmetologist." Rule 4713-5-07 requires that "[b]eauty salons must have a licensed managing cosmetologist on duty during all salon hours." There are no exceptions with respect to these requirements in either the statute or the rule for single operator beauty salons. Because the language of both the statute and the rule is clear and unambiguous, there is no occasion to resort to further statutory construction. *State ex rel. Stanton v. Zangerle*, 117 Ohio St. 436, 159 N.E. 823 (1927). I, therefore, find that R.C. 4713.14, which requires all beauty salons to be in charge of and under the immediate supervision of a licensed managing cosmetologist, and rule 4713-5-07, which requires a licensed managing cosmetologist to be on duty during all salon hours, are applicable to all beauty salons, including single operator beauty salons.

In your letter requesting my opinion, you noted that in 1938 Op. Att'y Gen. No. 1862, vol. I, p. 226, one of my predecessors determined that single operator beauty salons were not subject to the requirement that beauty salons be in charge of and under the immediate supervision of a licensed managing cosmetologist. That opinion, however, was based on my predecessor's construction of G.C. 1082-1(h) and G.C. 1082-17. Although G.C. 1082-17 contained essentially the same requirement as R.C. 4713.14, to wit, that beauty salons be in charge of and under the immediate

¹ With the approval of a member of your staff, I have rephrased your second question.

supervision of a managing cosmetologist,² the definition of "managing cosmetologist" in G.C. 1082-1(h) varied considerably from its current definition. G.C. 1082-1(h) defined managing cosmetologist as "any person who has or has had direct supervision over operators in a beauty parlor." My predecessor determined that since a managing cosmetologist was defined in terms of supervision over operators in a beauty parlor, and a single operator beauty salon contains only one operator or cosmetologist, it would be impossible, by definition, for a single operator beauty salon to be under the supervision of a managing cosmetologist. In order to reconcile the apparent conflict between G.C. 1082-17 and G.C. 1082-1(h), my predecessor determined that the requirement of G.C. 1082-17 was not intended to apply to single operator beauty salons.

The current definition of "managing cosmetologist", however, varies significantly from that of G.C. 1082-1(h) and, most importantly, does not define that position in terms of supervision over other cosmetologists. "'Managing cosmetologist' means any person who has met the requirements of division (C) of section 4713.04 of the Revised Code, and has applied for and received a managing cosmetologist license." R.C. 4713.01(G). R.C. 4713.04(C) provides as follows:

Applicants for a managing cosmetologist's license shall be of good moral character, have the equivalent of an Ohio public school eighth grade education, and shall have practiced as a cosmetologist in a licensed beauty salon in this or another state of the United States or the District of Columbia for at least one year, or have completed three hundred hours of board-approved curriculum additional in a licensed school of cosmetology in this state in subjects relative to advanced cosmetology, business management, and supervision. Certification of applicant's completion of one year's experience shall be made to the state board of cosmetology by the licensed managing cosmetologist or the owner of the licensed beauty salon in which the applicant has been employed, or certification of completion of the prescribed course of three hundred additional hours shall be made to the board by the school of cosmetology in this state. Upon either of the foregoing certifications and, except as provided in section 4713.09³ of the Revised Code, upon passage of an examination, the board shall issue a managing cosmetologist's license to the applicant. (Footnote added.)

This definition of "managing cosmetologist" is not based on supervision over other cosmetologists. For this reason, there is no inherent conflict between the definition of managing cosmetologist and the requirement of R.C. 4713.14; it is possible, therefore, to have a managing cosmetologist in a single operator beauty salon. Thus, based upon the amendment to the definition of "managing cosmetologist" in R.C. 4713.01(G), I overrule 1938 Op. No. 1862 (syllabus, paragraph one).

Your second question asks whether the requirement that beauty salons be in charge of and under the immediate supervision of a licensed managing cosmetologist, R.C. 4713.14, on duty during all salon hours, rule 4713-5-07, applies to nail salons. I note as a preliminary matter that within R.C. Chapter 4713, which governs the practice of cosmetology, there is no such entity as a "nail salon." Nor is there a definition for a "nail salon" or a license available for a "nail salon." R.C. 4713.01 to 4713.99. A member of your staff, however, has indicated that by use of the term "nail salon" you mean a beauty salon in which the only service provided is the manicuring of nails.

The definition of "beauty salon" in R.C. 4713.01 includes "any premises...in which *any branch of cosmetology*, except the occupation of a manicurist when

² G.C. 1082-17 provided, in pertinent part, that "[b]eauty parlors shall be in charge of and under the immediate supervision of a licensed managing cosmetologist." The language in the current statute, R.C. 4713.14, is identical except that the term "salons" is used rather than "parlors."

³ R.C. 4713.09 provides for certain instances in which a license may be granted without an examination.

carried on in a barber shop licensed under Chapter 4709. of the Revised Code, or the occupation of a cosmetologist is practiced." R.C. 4713.01(D) (Emphasis added). Furthermore, the practice of cosmetology includes the manicuring of nails. R.C. 4713.01(A). Thus any premises, with the exception of a barber shop licensed under R.C. Chapter 4709, where the practice of manicuring nails is performed, is a "beauty salon" for purposes of R.C. Chapter 4713.

I have already determined, in response to your first question, that R.C. 4713.14 and rule 4713-05-07 apply to all beauty salons. Therefore, a beauty salon in which the service is limited to manicuring nails (i.e., a nail salon) is required to be in charge of and under the immediate supervision of a licensed managing cosmetologist on duty during all salon hours.

It is, therefore, my opinion, and you are hereby advised that:

1. The requirements of R.C. 4713.14 and 7 Ohio Admin. Code 4713-5-07 apply to single operator beauty salons. (1938 Op. Att'y Gen. No. 1862, vol. I, p. 226, syllabus, paragraph one, overruled).
2. The requirements of R.C. 4713.14 and 7 Ohio Admin. Code 4713-5-07 apply to beauty salons in which the only service provided is the manicuring of nails.