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COSMETOLOGIST LICENSE, MANAGER—APPLICANT—NOT NECESSARY TO HAVE BEEN LICENSED, MANAGER, BEAUTY PARLOR IN ANOTHER STATE WHILE ACTING AS MANAGER—SECTION 1082-5, PARAGRAPH d G. C.

SYLLABUS:

It is not necessary for an applicant for a manager cosmetologist license, in order to meet the requirements of paragraph (d) of Section 1082-5, General Code, to have been licensed as manager of a beauty parlor during the period in which such applicant was actually engaged in the practice of manager of a beauty parlor in another state.

Columbus, Ohio, September 11, 1946

Mrs. Edna D. Stout, Chairman, State Board of Cosmetology
Columbus, Ohio

Dear Madam:

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

“The State Board of Cosmetology is hereby requesting a formal opinion on the following question:

The laws regulating the practice of cosmetology in many states do not provide for a managing cosmetologist license as provided in Section 1082-5 of the General Code of Ohio. If a cosmetologist should be employed as an operator in another state for five or more years, the cosmetologist after being licensed in Ohio is required to work as an operator for one and one-half to three years depending on educational record, before being eligible for a managing cosmetologist license.

In your opinion would it be considered reasonable for the State Board of Cosmetology to consider documentary evidence of five or more years experience as a licensed cosmetologist in another state as equivalent to one and one-half or three years' experience in Ohio, whichever may be required, according to Section 1082-5 of the General Code of Ohio?

We shall appreciate and be guided by your opinion on this question.”

Section 1082-5, General Code, reads in part as follows:

"On and after (sixty) 60 days after the appointment of the examining board by the governor, and thereafter at stated periods, the board shall hold an examination for the licensing of operator or manicurist, or shall issue licenses, as the case may be, to any person who shall have made application to the board in proper form, and paid the required fee, and who are not otherwise exempted under this act as provided in this act and who shall be qualified as follows:

(a) Applicants for a manager cosmetologist license, shall receive a license as such without an examination, providing they are not less than twenty-one years of age; have practiced in a beauty parlor or school of cosmetology as operators for at least 6 months immediately prior to application; be of good moral character, and shall pay the required fee. * * *

Provided, however, that on and after one year from the passage of this act no person shall receive a license as manager of a beauty parlor, except upon the payment of the required fee; and

(d) Who has not been actually engaged in the practice of manager of a beauty parlor in another state or territory of the United States, or the District of Columbia, for a period of 5 years; or

(e) Who has not had a training of at least one thousand hours, in the majority of the branches, in a school of cosmetology approved by the board, and has served as an operator not less than eighteen months in a licensed beauty parlor; or.

(f) Who has served less than three years as an operator in a licensed beauty parlor in which a majority of the occupations of a cosmetologist are practiced."

Consideration of your letter in its entirety, together with the provisions of the General Code quoted above, leads me to believe that the question you present to me may properly be stated as follows: Is it necessary for an applicant for a manager cosmetologist license, in order to meet the requirements of paragraph (d) of Section 1082-5, General Code, to have been licensed as manager of a beauty parlor during the period in which such applicant was actually engaged in the practice of manager of a beauty parlor in another state?

The solution to this question lies in the proper interpretation of the language contained in paragraph (d) of Section 1082-5, General Code.

This paragraph, along with paragraphs (e) and (f), is presently effective and establishes certain additional requirements for the issuance of a license as manager of a beauty parlor.

Paragraphs (d), (e) and (f) of Section 1082-5, General Code, are all part of a proviso which became operative one year after the passage of the Cosmetology Law. This proviso was considered by one of my predecessors in an opinion reported in 1938 Opinions of the Attorney General at page 226. The third branch of the syllabus of that opinion reads as follows:

“3. A person to be eligible as a managing cosmetologist must meet the requirements laid down in the proviso contained in Section 1082-5 of the General Code, the terms of which require that an applicant in order to be eligible for a manager’s license must either (1) have actually engaged in the practice as manager of a beauty parlor in another state or territory of the United States, or the District of Columbia for a period of five years, or (2) have a training of at least one thousand hours in an approved school of cosmetology and have served at least eighteen months as an operator in a licensed beauty parlor, or (3) have served for a period of at least three years as an operator in a licensed beauty parlor in which a majority of the occupations of a cosmetologist are practiced.”

In this opinion the then Attorney General pointed out that “under paragraphs (e) and (f), provisions are made for persons who have been practicing as operators within the state of Ohio”. A person who has not practiced as an operator in the state of Ohio for at least eighteen months can not fulfill the conditions of the proviso unless he can meet the requirements of paragraph (d) thereunder. To be successful in this he must have actually engaged in the practice as manager of a beauty parlor in another state or territory of the United States, or the District of Columbia for a period of five years.

Paragraph (d) requires no more than that. It does not even suggest that the practice as manager in another state must be under the authority of a license as manager granted by that state. To read into the law such a requirement would be to exceed the bounds of statutory construction by means of an attempted usurpation of the legislative function. 37 Ohio Jurisprudence, Statutes, Section 267.

In view of this, it is my opinion that it is not necessary for an applicant for a manager cosmetologist license, in order to meet the requirements of paragraph (d) of Section 1082-5, General Code, to have been licensed as manager of a beauty parlor during the period in which such applicant was actually engaged in the practice of manager of a beauty parlor in another state.

Respectfully,

HUGH S. JENKINS,
Attorney General.