

Note from the Attorney General's Office:

1938 Op. Att'y Gen. No. 38-1862 was overruled in part by 1989 Op. Att'y Gen. No. 89-076.

The language of Section 3100, General Code, that "The trustees of such children's home may also place children under their charge in suitable homes or private families through well known and established private institutions," can only be read as additional authority for the trustees of children's homes to place children in private homes other than through the agency of the State Division of Charities. In other words, the trustees of children's homes may, in the two above enumerated cases, contract for the placement and supervision of dependent children in private homes and in all other cases the trustees must directly employ and compensate a competent person to carry on the work as required in Section 3099, General Code.

It is my opinion, therefore, that pursuant to the provisions of Section 3100, General Code, a county child welfare board has the authority to contract with a private welfare institution for the payment of services necessary for the placement and supervision of dependent children in private homes, and is not limited to the payment by contract of the board, clothing and other physical necessities of dependent children.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1862.

COSMETOLOGY—BEAUTY PARLOR—SCHOOL OF COSMETOLOGY—GENERAL REQUIREMENTS—LICENSEE—MANAGER'S LICENSE—OPERATOR OF LICENSED BEAUTY PARLOR.

SYLLABUS:

1. *Under the provisions of paragraph (h) of Section 1082-1 and Section 1082-17 of the General Code, beauty parlors individually operated are not required to be in charge of or under the immediate supervision of a licensed managing cosmetologist.*
2. *All those beauty parlors employing two or more operators or those operated in connection with a school of cosmetology under the provisions of paragraph (h) of Section 1082-1 and Section 1082-17 of the General Code, are required to be in charge of and under the immediate supervision of a licensed managing cosmetologist.*
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 State, 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.

COLUMBUS, OHIO, February 2, 1938.

HON. HUGH A. STALEY, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

"I would like to have your opinion upon several propositions pertaining to the practice of cosmetology as found in the General Code, beginning at Section 1082-1 to Section 1082-23, inclusive.

The first proposition which I should like to have your opinion on is the language found in Section 1082-17 of the General Code, which section is headed as follows: 'Requirements for Schools of Cosmetology'; then follows the following language:

'Beauty parlors shall be in charge of and under the immediate supervision of a licensed managing cosmetologist.'

You will note that the remainder of the section deals entirely with the requirements for schools of cosmetology. I should like to know whether or not the language 'Beauty parlors shall be in charge of and under the immediate supervision of a licensed managing cosmetologist', in view of the other language of the same section, means that all beauty parlors which are not in connection with the schools of cosmetology as well as those in connection with schools of cosmetology must be supervised by a licensed managing cosmetologist, whether the same be beauty parlors operated by individuals or whether the beauty parlors be parlors where there are two or more licensed operators.

The second proposition which I should like to have your opinion on is the language to be found in Section 1082-5 of the General Code, which provides for the licensing of managing cosmetologists. You will note that the language in paragraph A of this section is of a general nature; that the language in paragraph C of this section, in the latter part, is as follows:

'Provided, however, that on or after one year from the passage of this act, no person shall receive a license as manager in the beauty parlor, except' * * *.

Section E provides as follows:

'Or who has had a training of at least one thousand hours in a 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.'

Having in mind the language of this section, I should like your opinion as to what are the necessary qualifications to entitle an applicant to be licensed as a managing cosmetologist.

The matter has come to my attention through the representative of the Board of Cosmetology, seeking the prosecution of a person who is not a licensed managing cosmetologist. This person insists that by reason of the double negative used in Sub-section C of Section 1082-5 in pari materia with E of the same section, that she is entitled to a license as a managing cosmetologist, even though she has not served as an operator for eighteen months.

Before I start prosecution upon this matter, I shall await your opinion as to this situation."

Section 1082-17 of the Cosmetology Law provides in part as follows:

"Beauty parlors shall be in charge of and under the immediate supervision of a licensed managing cosmetologist. Schools of cosmetology shall fulfill the following requirements:

* * *

(e) and shall maintain cosmetologists licensed as managers, as instructors of the practices of cosmetology."

Although this section of the Cosmetology Law is headed in the General Code of Ohio as "Requirements for schools of Cosmetology," it must be remembered that such heading is not in any sense of the term any limitation on the particular provisions of the section inasmuch as such heading is no part of the law itself, but merely the publisher's insertion for the convenience of those who have occasion to refer to the General Code. Consequently, since such heading is not part of the legislation, no reference can be made to such heading in an interpretation of the provisions of the section.

There is no provision contained in Section 1082-17 of the General Code which restricts the provisions that beauty parlors must be in charge and under the immediate supervision of a licensed managing cosmetologist. This is true regardless of whether reference is made to

beauty parlors operated in connection with a school of cosmetology, to beauty parlors operated not in connection with a school of cosmetology, or regardless of whether the same be beauty parlors operated by individuals or beauty parlors that employ two or more licensed operators. On the contrary, the section provides without any exception, and in all embracing terms, that "Beauty parlors shall be in charge of and under the immediate supervision of a licensed managing cosmetologist."

However, it is fundamental that in construing or interpreting statutes, in order to arrive at the real intent and purpose of the Legislature, consideration should not be given to only one or two sections of the act of which they are a part, but to all provisions of the particular law which in some degree, no matter how slight, bear upon the subject under consideration, and when construed or interpreted as a whole, establishes firmly the intent of the Legislature. As stated in 37 O. Jur., pages 606 to 610, inclusive:

"An act under consideration should be construed in its entirety. That is to say, the entire act should be examined and considered, and considered as a whole. No provision or part thereof can properly be disregarded in the construction of the statute. To the contrary, every part of the statute should be regarded in connection with the act of which it forms a part, so that all parts should be read together. The sense in which particular words, phrases, or clauses are used is to be ascertained from a view of the whole statute, rather than from isolated passages, except, perhaps, when such passages reach the entire subject-matter of the controversy."

Applying the foregoing rule of statutory interpretation to the provisions of the Cosmetology Law, it is incumbent in rendering this opinion, that consideration must be given to the related provisions of the Cosmetology Act in an attempt to ascertain whether the Legislature in the enactment of Section 1082-17, *supra*, intended that the provisions therein contained requiring that "Beauty parlors shall be in charge of and under the immediate supervision of a licensed managing cosmetologist," applied to not only beauty parlors employing two or more licensed operators, but also to beauty parlors individually operated. Paragraph (h) of Section 1082-1, General Code, provides as follows:

"The words 'manager' or 'managing cosmetologist' are defined as any person who has or has had direct supervision over operators in a beauty parlor."

It will be specifically noted from the legislative definitions of "man-

ager” and “managing cosmetologist” that those words only embrace persons who have or have had direct supervision over operators in a beauty parlor. Inasmuch as an apparent conflict exists between the provisions of Section 1082-17, supra, and those contained in the definition above quoted, it becomes necessary in order to properly determine the question here considered, to arrive at some conclusion as to the effect that is to be given to the provisions of Section 1082-17, supra, in view of the contradictory provisions contained in paragraph (h) of Section 1082-1 of the General Code.

In the case of *In Re Application of George Hesse for Writ of Habeas Corpus*, 93 O. S. 230, at page 234, the following declaration of the Supreme Court is found relative to the construction which should be given to conflicting provisions in statutes:

“It is settled that where there are contradictory provisions in statutes and both are susceptible of a reasonable construction which will not nullify either, it is the duty of the court to give such construction, and further, that where two affirmative statutes exist one is not to be construed to repeal the other by implication unless they can be reconciled by no mode of interpretation.”

Further, with reference to the effect that should be given to the legislative definition of words and phrases used throughout a particular act in the interpretation of ambiguous statutes therein contained, your attention is directed to 37 O. Jur., at pages 536 and 537, wherein it is stated:

“The lawmaking body’s own construction of its language, by means of definitions of the terms employed, should be followed in the interpretation of the act or section to which it relates and is intended to apply. Indeed, there is no better way to determine the intent and purpose of the legislature than by its own definition of the language used. Accordingly, any provision in a statute which declares its meaning is authoritative and in many cases, definitions of experts of the terms used are immaterial.”

It is apparent that if the conclusion herein reached were to the effect that all beauty parlors individually operated, were required to be in charge of and under the immediate supervision of a licensed managing cosmetologist, such conclusion would in fact render nugatory the provisions contained in paragraph (h) of Section 1082-1, supra, and

accordingly would be in direct opposition to authorities heretofore cited. Consequently, I am constrained to the view that the provisions of paragraph (h) of Sections 1082-1 and 1082-17 of the General Code, contemplate that only those beauty parlors employing two or more operators, or those operated in connection with schools of cosmetology, shall be in charge of and under the immediate supervision of a licensed managing cosmetologist.

In reaching this conclusion, some force is not only given to the first sentence of Section 1082-17, but the legislative definition of the words "manager" or "managing cosmetologist," as contained in paragraph (h) of Section 1082-1, is also given effect.

I come now to a consideration of your second question with respect to the interpretation that should be given to the provisions of Section 1082-5 of the General Code, as to the requirements prerequisite to obtaining a manager's license. The pertinent provisions of this section are as follows:

"On and after 60 days after the appointment of the examining board * * *, the board shall * * * issue licenses * * * to any persons * * * 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 six months immediately prior to application; be of good moral character, and shall pay the required fee.

* * *

(c) *** 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 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 five 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." (Italics, the writer's.)

The person mentioned in your request has been duly licensed as an operator and has evidently obtained a training of one thousand hours or more in an approved school of cosmetology and is now seeking a manager's license although she has not served a period of eighteen months as an operator in a licensed beauty parlor.

Considering the proviso quoted above, it would appear that the reason for its enactment is to make the requirements of a manager's license more stringent after the Cosmetology Law had been in effect for a period of one year. During the first year the act was in effect, in order to afford to all of those who had been engaged in the actual practice of any branch or branches of cosmetology, the opportunity of obtaining licenses by exemption, the Legislature enacted as part of the Cosmetology Act, Section 1082-10 of the General Code, which specifically authorized the granting of licenses without examination to all those persons who had been engaged in the actual practice of any branch or branches of cosmetology in established places of business or who had taught cosmetology in a bona fide school of cosmetology in this state at the time of the taking effect of the act. Moreover, a person who had been licensed only as an operator, by exemption or examination, could have obtained a manager's license under the comparatively easy qualifications laid down in paragraph (a) of Section 1082-5, *supra*. However, by the clear terms of the proviso, requirements for a manager's license one year after the act took effect became more stringent and only those persons able to qualify under the proviso could be granted a manager's license by the board of examiners. There is, however, one exception to the provision, and that is where a person has already received a license by exemption or examination as manager inasmuch as under the provisions of Section 1082-13 of the General Code such original manager's license, if the person continues in the actual practice of cosmetology, must annually be renewed on the payment of the required fee, even though the particular licensee does not possess all of the qualifications laid down under the provisions of the proviso. See Opinions of the Attorney General for the year 1935, Volume II, page 1021, at pages 1026 and 1027.

Since the Cosmetology Law became effective on September 28, 1933, and the terms of the proviso (with reference to the issuance of a manager's license), were to govern on and after one year from that date, it is obvious that all persons, except those mentioned in the exception above, must meet the qualifying conditions laid down in the proviso to be eligible for a manager's license. Under the proviso, a person to be eligible for a manager's license must either (1) have actually engaged in the practice of a 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 the majority of the branches approved by the Board and have served eighteen months as an operator in a beauty parlor, or (3) have served three years as an operator in a licensed beauty parlor in which the majority of the occupations of a cosmetologist are practiced. To my mind, the terms of the proviso governing qualifications for a manager's license one year after the effective date of the act are clear and free from ambiguity and admit of no other construction than that heretofore stated.

Under the terms of paragraph (d) of Section 1082-5 of the General Code, provision is made for applicants who have engaged in the practice of managers of a beauty parlor outside the state. Under paragraphs (e) and (f), provisions are made for persons who have been practicing as operators within the State of Ohio. I assume that the person mentioned in your inquiry has been practicing as an operator in a licensed beauty parlor within this state. By the provisions of paragraph (e) of Section 1082-5, supra, in addition to having completed a training of at least one thousand hours in an approved school of cosmetology, the applicant must also serve as an operator in a licensed beauty parlor for at least eighteen months before being eligible for a manager's license. If such applicant did not have the required one thousand hours school training, under the terms of paragraph (e) of Section 1082-5, supra, a training period as an operator in a licensed beauty parlor for at least three years would be necessary before the applicant is eligible to receive a manager's license.

From the provisions of Section 1082-5, supra, it is clear that an applicant for a manager's license, since it is now more than one year from the effective date of the Cosmetology Act, must comply with the terms of the proviso therein contained, and to be eligible for a manager's license the applicant must meet the requirements laid down in either paragraph (e) or (f) of Section 1083-5 of the General Code. Inasmuch as the provisions of this section are free from

ambiguity and clearly express the intent and purpose of the Legislature, there is no room for any other construction.

Therefore, in view of the foregoing, and in specific answer to the questions presented by your request, it is my opinion that:

1. Under the provisions of paragraph (h) of Section 1082-1 and Section 1082-17 of the General Code, beauty parlors individually operated are not required to be in charge of or under the immediate supervision of a licensed managing cosmetologist.

2. All those beauty parlors employing two or more operators or those operated in connection with a school of cosmetology under the provisions of paragraph (h) of Section 1082-1 and Section 1082-17 of the General Code, are required to be in charge of and under the immediate supervision of a licensed managing cosmetologist.

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.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1863.

CONSTABLE — WHERE PERSON COMMITTED MISDEMEANOR IN TOWNSHIP AND FLED ACROSS TOWNSHIP LINE—CONSTABLE WITHOUT AUTHORITY TO PURSUE AND ARREST SUCH PERSON—PEACE OFFICER.

SYLLABUS:

A constable is without authority under the law of Ohio to pursue and arrest a person, found by him in the commission of a misdemeanor within the limits of the township for which such constable was appointed or elected, beyond the limits of such township.