



**THE ATTORNEY GENERAL
OF TEXAS**

July 7, 1988

**JIM MATTOX
ATTORNEY GENERAL**

Ms. Jo King McCrorey
Executive Director
Board of Barber Examiners
1300 E. Anderson Lane
Building C, Suite 275
Austin, Texas 78752

LO-88-77

Dear Ms. McCrorey:

You ask if the Board of Barber Examiners or any other agency has the responsibility and authority to regulate and enforce minimum standards of sanitation and sterilization for "haircutting services" in the facilities of the Texas Department of Corrections.

The Texas Barber Law, article 8407a, V.T.C.S., provides in part:

Section 1. It shall be unlawful for any person to engage in the practice or attempt to practice barbering in the State of Texas without a certificate or registration as a registered barber issued pursuant to the provisions of this Act, by the Board of Barber Examiners hereinafter created.

Sec. 2. From and after the effective date of this Act, unless duly licensed and registered in accordance with all laws of this state regulating the practice of barbering, no person shall:

(a) practice, continue to practice, offer, or attempt to practice barbering or any part thereof. . . .

Section 4 of article 8407a contains the definition of "barber" and "barbering":

In this Act, unless the context otherwise requires:

(a) 'barber' shall mean any person who performs, offers, or attempts to perform any act of barbering, professes to do barbering or to be engaged in the practice thereof, or who directly or indirectly or in any manner whatsoever advertises or holds himself out as a barber or as authorized to practice barbering;

(b) 'barbering,' 'practicing barbering,' or the 'practice of barbering' shall mean the performing or doing, or offering or attempting to do or perform, any, all or any combination of the following acts, services, works, treatments, or undertakings:

(1) arranging, beautifying, coloring, processing, shaving, styling, or trimming the mustache or beard by any means or method;

(2) arranging, beautifying, bleaching, cleansing, coloring, curling, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, waving, or otherwise treating the hair as primary services, treatments, or undertakings by any means or method, including any bobbing, clipping, cutting, or trimming of the hair as a necessary incident preparatory or ancillary to such primary services;

(3) cutting the hair as a primary service, treatment, or undertaking and not as a necessary incident preparatory or ancillary to those primary services enumerated in Section 4(b)(2), or primarily engaging in the occupation of cutting hair or practicing primarily as a haircutter by cutting hair as a separate and independent service, treatment, or undertaking for which haircut a charge is made, as such, separate and apart from any other service, treatment, or undertaking, directly or indirectly, or in any manner whatsoever;

(4) cleansing, stimulating, or massaging the scalp, face, neck, arms, shoulders, or that part of the body above the shoulders, by means of the hands, devices, apparatuses, or

appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams;

(5) beautifying the face, neck, arms, shoulders, or that part of the body above the shoulders by the use of cosmetic preparations, antiseptics, tonics, lotions, powders, oils, clays, creams, or appliances;

(6) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person or attaching false nails;

(7) massaging, cleansing, treating, or beautifying the hands of any person;

(8) administering facial treatments;

(9) hair weaving;

(10) shampooing or conditioning hair;

(11) servicing a wig, toupee, or artificial hairpiece on a human head or on a block, subsequent to the initial retail sale by any of the acts, services, works, treatments, or undertakings enumerated in Section 4(b)(2) of this Act;

(12) advertising or holding out to the public by any manner whatsoever that any person is a barber or authorized to practice barbering;

(13) advertising or holding out to the public by any manner whatsoever that any location or place of business is a barber shop, barber school, barber college, or barber salon;

(14) receiving any fee, salary, compensation, or financial benefit, or the promise of any fee, salary, compensation, or financial benefit, for performing, doing, offering, or attempting to perform or do any act, work, service, or thing, which is any part of the practice of barbering as herein defined. . . . (Emphasis added.)

Under the foregoing definitions a "barber" is any person "who performs, offers, or attempts to perform any act of barbering." "[A]ny, all or any combination" of the numerous acts listed under section 4(b) constitute "barbering." "Cutting or trimming of the hair" (subdivision(2)) or "cutting the hair as a primary service" (subdivision (3)) would appear to be a necessary part, or at the least, incident to "haircutting services." V.T.C.S. art. 8407a, §4(b). It is our opinion that the act of performing or attempting to perform "haircutting services" is "barbering" and that anyone who performs or attempts to perform barbering is a barber within the meaning of the act.

Certain classes of persons are exempt from the provisions of this act in section 6 of article 8407a:

The following persons shall be exempt from the provisions of this Act, provided such persons are not represented, advertised, or held out to the public, directly or indirectly, or in any manner whatsoever, as barbers, journeymen barbers, barber technicians or under any name, title, or designation indicating such person is authorized to practice by authority of any license or permit issued by the board:

(a) physicians, osteopaths, and registered nurses licensed and regulated by the State of Texas;

(b) commissioned or authorized medical or surgical officers of the United States Army, Navy, or Marine Hospital Service;

(c) persons licensed or practicing by authority of the Texas Cosmetology Commission under the provisions of Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), so long as such persons practice within the scope of the license or permit duly issued by the Texas Cosmetology Commission.

Sec. 6 amended by Acts 1930, 41st Leg., 5th C.S., p. 134, ch. 15, §3; Acts 1975, 64th Leg., p. 2135, ch. 691, §5, eff. Sept. 1, 1975.

"It is a familiar rule of statutory construction that an exception makes plain the intent that the statute should apply to all cases not excepted." State v. Richards, 301 S.W.2d 597, 600 (Tex. 1957). In Attorney General Opinion MW-526 (1982) it was concluded that barber shops located in Mental Health and Mental Retardation facilities did not come within the statutory exceptions and had to be licensed under article 8407a. While it is not clear from your opinion request, it would appear that the persons who are engaged in performing "haircutting services" are inmates in the Texas Department of Corrections who have not been licensed under the provisions of article 8407a. It is our opinion that the fact that the inmates who are engaged in performing "haircutting services" may not receive any of the benefits listed in subdivision (14) of section 4 does not exempt them from this act. A review of section 4 of article 8407a reflects that the performances of any one of the acts listed thereunder constitutes barbering and the receipt of benefits is not a prerequisite to bringing a person within the provisions of this act. Sections 1 and 2 of article 8407a prohibit barbering in unlicensed facilities and we conclude that the facilities where barbering is practiced at the Texas Department of Corrections must be licensed under the provisions of this act.

Your concern is directed to which agency has the "responsibility and authority to regulate and enforce minimum standards of sanitation and sterilization for haircutting services" in the Texas Department of Corrections. Being of the opinion that "haircutting services" performed at the Texas Department of Corrections come within the provisions of article 8407a, and that the places or shops where barbering is performed must be licensed under this act, we look to section 28(a) of the act providing in part:

The State Board of Health shall make, establish and promulgate reasonable sanitary rules and regulations for the conduct of barber shops and barber schools. The State Board of Barber Examiners, by and through the Health Department of the State of Texas, shall have authority, and it is made its duty to enter upon the premises of all barber shops, barber schools or any place where any of its licensees are practicing or performing any service, act or treatment by authority of any license issued by the board and inspect same at any time during business hours.

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V.T.C.S. art. 8407a, § 29(a). Thus, the Board of Barber Examiners by and through the Department of Health has the responsibility and authority to regulate and enforce minimum standards of sanitation and sterilization for haircutting services in the facilities of the Department of Corrections upon the licensing of the facilities where barbering is performed.

Very truly yours,

A handwritten signature in cursive script, reading "Rick Gilpin".

Rick Gilpin
Chairman
Opinion Committee

RG/TGD/bc

Ref.: RQ-983

APPROVED: OPINION COMMITTEE