

The State of South Carolina



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August 1, 1986

Ms. Doris Brantley
Executive Secretary
State Board of Cosmetology
1209 Blanding Street
Columbia, SC 29201

Dear Ms. Brantley:

In your letter of May 9, 1986, you inquire as to whether the State Board of Cosmetology has the authority to license mobile cosmetological units. For the purpose of this opinion, it is assumed that a mobile unit is one that would or could be moved from one location to another.

A licensing board possesses only those powers which are conferred expressly or can reasonably be implied, or are incidental to the powers expressly granted. Brooks v. S.C. State Board of Funeral Service, 247 S.E.2d 820, 271 S.C. 457 (1978). The Cosmetology Board's express statutory powers are found in §§40-13-10 through 40-13-280 of the Code of Laws of South Carolina, 1976, as amended. Section 40-13-20 provides that, "No person shall . . . operate a salon . . . without having first obtained a license from the State Board of Cosmetology." Further, §40-13-280(6) makes it a misdemeanor to practice or attempt to practice cosmetology in any place other than a licensed salon (except in an emergency such as illness, invalidism or death) and provides penalties for the unlawful act.

The issue is whether a mobile unit falls within the definition of "salon." Section 40-13-10(7) states:

"Place of Cosmetology," or "Beauty Salon," or "Hairdressing Establishment," hereinafter called "salon," means any building, or any place or part thereof, in which cosmetology or any of its practices are performed on the general public for compensation. (Emphasis added)

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The law is clear that, in construing a statute, legislative intent governs. It is equally well-settled that words in a statute are to be given their plain and ordinary meaning. The State Supreme Court, citing Webster, has said, "The word 'building' means a fabric framed or designed to stand more or less permanently." Brown v. Sikes, et al., 198 S.E. 854, 858, 188 S.C. 288 (1938). In Brown, the issue was whether or not the General Assembly had authorized Clemson University to construct only one "barracks building" or more than one building. Thus, the Court did not focus on a detailed analysis of what might and might not constitute a building.

I am not aware of any South Carolina case where the Court has addressed whether or not a mobile unit can be construed as a building. The Supreme Court of Georgia has held that a mobile home which was completely enclosed, had a porch built and attached, had concrete underpinnings, had a metal roof attached to it, and had a septic tank line, gas line, water line and electrical lines, was a building, within the meaning of the terms of a restrictive covenant. Lawrence v. Harding, 166 S.E.2d 336, 338, 225 Ga. 148 (1969). On the other hand, the Missouri Court of Appeals has held that a forty-foot semitrailer which was on wheels, was moved from place to place with a carnival, and was not equipped for water or sewer hook-up, was not a building within the meaning of the second-degree burglary statute. State v. Scilagyi, 579 S.W.2d 814 (1979). It is interesting to note the definition of "building" used by the Scilagyi Court, quoting from Webster's Third International Dictionary (1961):

. . . a constructed edifice designed to stand more or less permanently, covering a space of land, usu. covered by a roof and more or less completely enclosed by walls, and serving as a dwelling, storehouse, factory, shelter for animals, or other useful structure -- distinguished from structures not designed for occupancy (as fences or monuments) and from structures not intended for use in one place (as boats or trailers) even though subject to occupancy. (Emphases added)

Webster's Third New International Dictionary (1976) contains the same definition and it is most likely that, in future cases, our State Supreme Court would continue to turn to the dictionary. I believe, under Webster's definition, "building" does not encompass a mobile unit.

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The word "place" has a variety of meanings. Quoting, in part, from Webster's lengthy definition, "place" means:

[an] open space in a city, space, locality . . .
an indefinite region or expanse . . . a building
or locality used for a special purpose . . . an
individual dwelling or estate . . . Webster's
Third New International Dictionary (1976).

Black defines "place":

This word is a very indefinite term. It is
applied to any locality, limited by boundaries .
. . . In its primary and most general sense
means locality, situation, or site, and it is
also used to designate an occupied situation or
building . . . Black's Law Dictionary 1034 (5th
Ed. 1979).

And, as discussed in Corpus Juris Secundum:

In its primary and most general sense the term
"place" is defined as meaning locality,
situation, or site; an area or portion of land
marked off . . . or separated from the rest, as
by occupancy, use, or character; . . . a
definite locality or location; . . . The word
"place" frequently is used to denote, or as
meaning, a building. 70 C.J.S. Place 1093, 1094
(1951).

In People v. Weisblatt, 258 N.Y.S. 687, 144 Misc. 197 (1932), the
Court interpreted the word "place" in a city ordinance which
prohibited the operation of a radio or other sound-reproducing
device, without a permit, ". . . outside of any building, place or
premises . . . adjacent to a public street . . ." The appellant had
been arrested while driving a truck and using a radio installed on
the truck to attract attention to an advertisement on the side of
the truck. The Court, citing definitions from two dictionaries,
said:

The use of this word [place] in conjunction with
buildings and premises satisfies us that the
intention of the ordinance was to license radios
. . . when situated at some definite location,
and does not apply to a vehicle in motion. 258
N.Y.S. 688.

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While "place" has a number of meanings, the thrust of the definitions appears to center on a fixed physical location and probably does not encompass an object, such as a mobile salon, which can be moved from one location to another.

Turning to legislative intent, it is widely accepted that two of the main purposes of licensing a profession or occupation are to protect the public and to maintain health and safety. The Cosmetology Board, through its Sanitary Rules and Regulations for the Management of Cosmetology Establishments in South Carolina, Reg. 35-20, aims at prescribing safe and hygienic cosmetology establishments. Reg. 35-20 provides, in part:

To assure compliance with the rules and regulations governing the operation of salons . . . the Board . . . shall have the right of access to any salon . . . at any time that the . . . practice of cosmetology is being conducted, for the purpose of inspecting the premises . . .

Each salon shall . . . be given a sanitary rating . . . The rating given to said establishment shall be posted in a conspicuous (sic) place accessible for public view.

Further, §40-13-170(2) provides that a salon license "shall be valid only for the location named on it and it shall not be transferable."

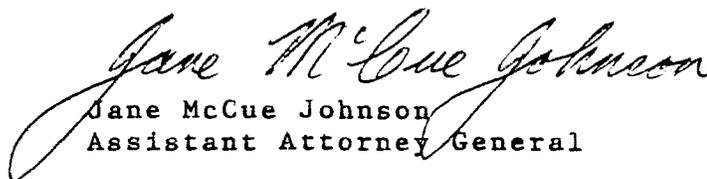
In the case of a mobile salon, without a street address, the uncertainty of the physical location of the salon could create practical problems. For example, the Board might encounter difficulty in exercising its right of access for inspection purposes, and it is feasible that the sanitary rating and/or the salon license could be moved from one mobile salon to another. The broad legislative intent, in this context, of protecting the public from unsafe and unhealthy cosmetology practices could easily be thwarted.

Accordingly, we doubt that in the typical situation a mobile unit which would or could be moved from one location to another, would qualify as a "salon" pursuant to §40-13-10(7). Of course, our opinion herein addresses application of §40-13-10, et seq., with respect to the situation which you have described, and we do not attempt to comment herein upon any factual variance where a unit in question does not normally move from one place to another. Such

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unusual factual circumstances should be left to the discretion of the Board of Cosmetology to determine based upon all the existing facts.

Sincerely yours,


Jane McCue Johnson
Assistant Attorney General

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REVIEWED AND APPROVED:



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