

The State of South Carolina



Office of the Attorney General

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May 26, 1994

C. Arthur Pruitt
South Carolina State Board of Cosmetology
3710 Landmark Drive, Suite 205
Columbia, South Carolina 29204

Dear Mr. Pruitt:

You have asked for an Opinion from this Office regarding three (3) issues raised by the Cosmetology Board ["Board"] relating to the practice of cosmetology in South Carolina. I will address them in the order raised.

1. Is the Board in violation of S.C. Code Ann. §40-13-90 (Supp. 1992) by allowing vocational students to take the licensure examination after completing only 1000 hours of cosmetology training when the law requires 1500 hours in cosmetology classes before students may be eligible to take the licensing examination.

You indicate that in 1982, the Department of Education and the Board agreed upon a curriculum policy which retained the cosmetology training in public schools at 1000 hours, as opposed to increasing it to 1500 hours as required by the 1982 Act No. 388 which is now codified as S.C. Code Ann. §40-13-90.

South Carolina law requires, for a license as a cosmetologist, that a student:

has completed at least one thousand five hundred hours in classes in cosmetology in a reliable school approved by the board . . .
[Emphasis added]

S.C. Code Ann. §40-13-90 (b) (Supp. 1992). The law is silent on defining "a reliable school approved by the board." However, there is no indication in the law that the legislature intended to give

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the Board authority to regulate cosmetology schools operating in public schools, but instead to give such authority exclusively to the State Board of Education. The State Board of Education has the power to:

adopt policies, rules and regulations not inconsistent with the laws of the State for its own government and for the government of the free public schools.

adopt minimum standards for any phase of education as are considered necessary to aid in providing adequate educational opportunities and facilities.

Prescribe and enforce courses of study for the free public schools [Emphasis added].

S.C. Code Ann. §§59-5-60 (1), (3), (6), (1990). It has the further power and responsibility to:

Promulgate regulations to ensure that each school district in its secondary school or vocational center shall establish clearly defined vocational programs designed to provide meaningful employment.

S.C. Code Ann. §59-5-65 (6), (1990). In accordance with this authority, the State Board of Education has promulgated, among others, the following regulation regarding instructional programs in the State's public schools.

In addition to the policies of the State Board of Education, the programs under the jurisdiction of other state licensure boards shall meet their requirements. [Emphasis added].

24 S.C. Code Ann. Regs 43-236(C)(1976).

Thus, it appears that the agreement you referred to as having been effected by the State Department of Education and the State Board of Cosmetology in 1982 does contain a provision in contradiction to the State cosmetology law regarding minimum hours required for licensure and the State Board of Education's regulation regarding its deference to State licensing board requirements.

The Board's regulation which states:

Public school Cosmetology programs include accredited high schools, trade schools or industrial schools.

Every person who successfully completes the course in Cosmetology, or any of its branches, given in a school under the public school system of this State is accorded the same eligibility for registration and licensure under this Chapter as those who have completed a course in a licensed private school approved by the State Board of Cosmetology. [Emphasis added].

23A S.C. Code Ann. Regs. 35-11 A.B. (Supp. 1992), (read in conjunction with S.C. Code Ann. §40-13-90(b) regarding minimum hours, and the State Board of Education Reg., 24 S.C. Code Ann. Regs. 43-236(C), deferring to licensure board requirements), must not be taken to allow a lesser standard for public school cosmetology graduates than is required by law for graduates of proprietary schools, absent clear authority to do so.

2. In view of the language of 23A S.C. Code Ann. Regs. 35-22 approved by the General Assembly, May, 1993, does the Board have authority to reduce or waive fines.

The regulation provides:

Any person who violates any provision of 1976 South Carolina Code of Laws Section 40-13, any regulation of Chapter 35 . . . or any duly issued Order of the Board may incur . . . a civil penalty in an amount of not more than five hundred dollars for each violation In establishing the amount of the penalty for each violation, the Board shall consider, but not be limited to, the following factors:

- (1) The gravity and magnitude of the violation;
- (2) The person's previous record of complying or of failing to comply with the provisions of Section 40-13 or with the rules adopted under South Carolina Chapter 35;

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- (3) The person's history in taking all feasible steps or in following all procedures necessary or appropriate to correct the violation;
- (4) Such other factors as the Board may consider appropriate.

Establishing Civil Penalty Amounts

. . . . The actual civil penalty which the Board assesses shall be based on the Board's consideration of the factors listed in A above, but the fine for any one violation shall not exceed five hundred dollars.

Schedule of Safety and Sanitary Rules Violations

Refusal to permit or interference with a salon inspection

- (a) For first offense: \$50
 - (b) For second offense: \$100
 - (c) For third offense: \$200
- [Emphasis added]

23A S.C. Code Ann. Regs. 35-22 A, B, D, approved May, 1993.

The Board has stated its desire to be "consistent and equitable and to consider and evaluate each case on an individual basis." It has also established certain specific monetary fines for the first, second and third offenses of specifically enumerated violations. Thus, it would reasonably appear that the enumerated fines and violations are meant for the Board's guidance only; and that the Board is free to adjust such fines as it shall determine, based on its consideration of the factors listed in Section A, so long as the fine for any one violation does not exceed five hundred dollars.

Whether or not the Board has authority "to reduce or waive fines" based on this regulation is a matter for the Board to determine. The Board has authority to interpret its own laws; and absent cogent reasons, such interpretation will not be disturbed. Faile v. South Carolina Employment Security Commission, 267 S.C. 536, 540, 230 S.E.2d 219, 221-222 (1976).

- 3. Under the language of 23A S.C. Code Ann. Regs. 35-24A(2) (Supp. 1992) would a vocational school be eligible to submit a continuing education program for approval and to present

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the program if it meets all the criteria as set forth in Board regulations.

The regulation in question permits continuing education programs to be conducted and monitored by certain designated "state-wide organizations" as well as by "any other state wide group or association who can present a satisfactory program to the Board. . . ."

The designated state-wide organizations are:

- (a) State Active cosmetology teachers in Vocational Education (ACTIVE)
- (b) S.C. Association of Cosmetology Schools, Inc. (SCACS)
- (c) S.C. Registered Cosmetologist Association (SCRCA)
- (d) S.C. State Cosmetologist Association (SCSCA)

S.C. Code Ann. Regs. 35-24A (1) (Supp. 1992).

A vocational school supported entirely by public funds would be classified as a public school per S.C. Code Ann. §59-1-120 (1990). As a public school, a vocational school would come within the ambit of a school district which is defined as:

. . . any area or territory comprising a legal entity, whose sole purpose is that of providing free school education, whose boundary lines are a matter of public record, and the area of which constitutes a complex tax unit.

S.C. Code Ann. §59-1-160 (1990).

Further, a school district is classified as a "body politic and corporate." S.C. Code Ann. §59-17-10 (1990).

Thus, it is not likely that the Board's designation of state-wide organizations would embrace a vocational school within a state-wide public education system. However, it may be possible that a group of cosmetology teachers within a vocational school, who are also members of a state-wide group of cosmetology teachers or cosmetologists, may qualify to conduct continuing education courses for cosmetologists, provided they meet the "specified criteria established by the Board." per S.C. Code Ann. Regs. 35-24 A. (Supp. 1992).

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I trust that this information is helpful.


Sincerely,




Alice C. Broadwater
Assistant Attorney General

ACB/fg

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