



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

June 19, 1987

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 87- 95

Charles Lutz, Administrative Officer
State Board of Barber Examiners
630 Kansas Avenue
Topeka, Kansas 66603

Re: Public Health--Examination, Registration and
Regulation of Barbers--Schools or Colleges of
Barbering; Approval by Board; Requirements

Synopsis: Pursuant to K.S.A. 65-1810 a school of barbering student must complete 1,500 hours of instruction in nine months, with a maximum of eight hours in a day. In our judgment, K.A.R. 61-3-17 which allows a student to make up lost time, adequately deals with time missed during the nine month period. Additionally, while there is no formal definition of a full-time student in the statutes, in our opinion, for purposes of fulfilling the statutory requirements a full-time student is one that can complete the required hours of instruction in the time frame set by statute.

Because K.A.R. 61-3-22 prohibits the issuing of a permit to a night school, it is our opinion that a school that operates 8:00 a.m. to 5:00 p.m. cannot lawfully run a second shift. Proposed changes to the regulatory scheme, in our judgment, can be effected by adding the changes to pertinent existing regulations or by promulgating new regulations, provided the changes are appropriate, reasonable and within the statutory authority conferred by the legislature. Cited herein: K.S.A. 65-1810; K.A.R. 61-3-2; 61-3-8; 61-3-17; 61-3-22.

*

*

*

Dear Mr. Lutz:

As Administrative Officer of the State Board of Barber Examiners you request our opinion regarding the statutory and regulatory scheme pertaining to schools of barbering. Specifically you ask the following questions:

1. Does K.A.R. 61-3-17 adequately deal with time lost by a student in fulfilling the 1,500 hours of instruction required to be completed within nine months, with no more than eight hours a day, in accordance with K.S.A. 65-1810.
2. If the statutes and regulations were amended to allow completion of the 1,500 hours of instruction "to be completed within twelve months", what would a full time student be considered?
3. Would the running of a second shift by a school that operates 8 to 5 be considered running a night school in violation of K.A.R. 61-3-22?
4. If the Board wants to make a minimum number of square feet and a minimum number of students required before opening a school, can it be done by amending a regulation or does it require amending K.S.A. 65-1810 the statute dealing with schools?

Your questions will be answered in the order asked. Your first question dealing with student's missed time is addressed in K.A.R. 61-3-17 that states in part "regular school hours shall be established by all schools and colleges. Any time lost by the student shall be made up before a diploma is issued." While recognizing that K.S.A. 65-1810 requires that a student complete the 1,500 hour of instruction in nine months, it is our opinion that K.A.R. 61-3-17 adequately provides allowances for time that is missed during the nine month period.

Your second question asks how a full time student would be defined if the statutes and regulations were amended to allow a twelve month period to complete the 1,500 hours of required instruction. There is no formal definition of a "full time" student in the statutes, but as a practical matter a student under the present time frame must attend eight hours a day, five days a week in order to complete 1,500 hours of instruction in nine months. Thus a full time student is one that completes the 1,500 hours in the time frame allowed by the statute. Logically if the time frame is extended to

that completes the 1,500 hours in the time frame allowed by the statute. Logically if the time frame is extended to twelve months, a full time student can take less than eight hours a day to complete the required hours of instruction in the time frame established by statute. Therefore, while there is no formal statutory definition of what constitutes a "full-time" student, it is our opinion that as a practical matter a student that can complete the required hours of instruction in the required time frame set by statute is a full time student for purposes of fulfilling the statutory requirements.

Your third question inquires whether the running of a second shift by a school that operates from 8:00 a.m. to 5:00 p.m. would be considered the running of a night school in violation of K.A.R. 61-3-22. The regulation states: "The board shall not issue a permit to any correspondence or night school." The American Heritage Dictionary (1981) p. 887 defines a night school as one that holds classes in the evening. Classes conducted after five p.m. would necessarily have to be conducted in the evening. Thus conducting evening classes constitutes the running of a night school. Therefore it is our opinion that a school that operates 8:00 a.m. to 5:00 p.m. cannot lawfully run a second shift. (See also K.A.R. 61-3-17).


Your fourth and last question asks whether a proposed change in the requirements for opening a barbering school can be effected by adding the requirements to existing regulations. To be effective regulations adopted by an administrative agency must be within the statutory authority conferred and must not contravene controlling statutes. Tew v. City of Topeka Police and Fire Civil Service Commission, 237 Kan. 96 (1985). Halford v. City of Topeka, 237 Kan. 96 (1984). Thus, like any agency or department to whom the legislature delegates administrative authority, the barber board, legally, must confine its actions to the parameters of the authority conferred. As such the board promulgates regulations to implement and interpret legislation only to the extent allowed by the enabling statute.

Specifically you want to require that a school have a minimum number of square feet and a minimum number of student applications before a permit to operate such school is issued. The general enabling statute, K.S.A. 65-1825, provides the board of barbers with broad and general powers to adopt rules and regulations. However, they must be appropriate, reasonable and not inconsistent with the law. Pork Motel, Corp. v. Kansas Dept. of Health and

Environment, 234 Kan. 374, 379 (1983), 2 Am.Jur.2d
Administrative Law, §349 (1962). Given that the proposed
changes are within the statutory scheme of regulating the
operation of barber schools, it is our opinion that the
proposed changes can be effected by amending an existing and
pertinent regulation or by promulgating a new regulation.

In conclusion it is our opinion that the regulations
adequately deal with time missed by a student completing his
1,500 hours of required instruction. While there is no formal
definition of a full-time student, in our judgment a student
that can complete the required 1,500 hours of instruction in
the required time frame established by statute is a full-time
student for purposes of fulfilling the statutory
requirements. Because K.A.R. 61-3-22 prohibits the running of
a night school of barbering, it is our opinion that a school
that operates from eight in the morning to five in the evening
cannot lawfully run a second shift. Finally, in our judgment,
proposed changes to the regulatory scheme can be effected by
adding the changes to pertinent existing regulations or by
promulgating new ones, provided the changes are appropriate,
reasonable and within the statutory authority conferred.

Very truly yours,


OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN


Guen Easley
Assistant Attorney General

RTS:JLM:GE:jm