

**OPINION
71-155**

June 1, 1971 (OPINION)

Mr. Thomas F. Kelsch

State's Attorney

Burleigh County Courthouse

RE: Hairdressers - Wigs - Licenses

This is in response to your letter of April 19, 1971, wherein you request an opinion of this office concerning Chapter 43-11 of the North Dakota Century Code as it relates to persons engaged in selling, arranging and styling wigs within the State of North Dakota. You submit the following inquiry in your letter:

"It has been called to my attention that a number of retail stores and individuals, not licensed by the North Dakota Board of Hairdressers and Cosmetologists, are engaged in the selling and servicing of wigs in our state.

"In many instances it appears that the seller must arrange, comb or brush the customer's hair and cut and style the wig, and, of course, place the wig or hairpiece on the customer's head.

"Chapter 43-11 of the North Dakota Century Code requires a certificate and sets certain qualifications for practicing hairdressers and cosmetologists in our state. I would like to know whether our law is being violated by sales personnel who do not have a certificate and who may comb, arrange or brush an individual's hair when selling or servicing a wig.

I am enclosing clippings from local newspapers which will give your office some idea of the retail outlets and individuals, who are not licensed, and who are selling wigs in the state at this time. You will note that some wigs are sold in hotel and motel rooms and sales staff travel from town to town. The advertisements also state that a 'professional consultant,' a 'professional wig artist,' a 'professional stylist' and an 'expert stylist' will aid the prospective purchaser of wigs.

"I have been informed that a similar question was recently presented to the Attorney General of the State of Missouri. I am enclosing his opinion and a reprint of an identical law in that state regulating hairdressers and cosmetologists. The Missouri Attorney General held that department store sales personnel combing, brushing or arranging a customer's hair in the process of selling or servicing wigs must obtain a certificate from the State Board of cosmetology. In addition, it was stated that a department store selling or servicing wigs must also obtain a certificate of registration. I understand that the Attorney General's office in Missouri is in the process of contacting all stores and individuals selling or

servicing wigs."

You have enclosed with your inquiry a xerox copy of the Attorney General's opinion referred to from the state of Missouri, a xerox copy of the laws of the state of Missouri regulating hairdressers and cosmetologists, and xerox copies of local advertisements relating to the selling of wigs. In view of your request and information submitted, we will first review the furnished Attorney General's opinion, the Missouri law governing the subject and finally the provisions of North Dakota law on the subject.

We would first note that the Missouri law, upon which the Attorney General's opinion is based, is not identical to the law of this State in that it refers specifically to a person or persons "who engages for compensation" in such practices as are specified by that statute as constituting hairdressing or cosmetology. In that connection, we note that the opinion holds, and in which we concur, as follows:

- "1. Department store sales personnel who receive compensation either from the store or from the customer for combing, brushing and arranging individual's hair in the process of selling or servicing wigs are practicing the occupation of hairdressing within the meaning of Section 329.020, RSMo 1969, and must obtain a certificate of registration from the State Board of Cosmetology.
- "2. The department store in which the occupation of hairdresser is practiced must also obtain a certificate of registration from the State Board of Cosmetology." (Emphasis supplied)

Quoting from the Missouri law, Section 329.020, RSMo 1969, provides in part as follows and serves as the basis for the foregoing Attorney General's opinion:

"Any person who engages for compensation in any one or any combination of the following practices, to wit: Arranging, dressing, curling, singeing, waving, permanent waving, cleansing, cutting, bleaching, tinting, coloring or similar work upon the hair of any person by any means shall be construed, to be practicing the occupation of a hairdresser* * *."

From the context of that opinion, it is made clear that the persons governed thereby must: (1) be actually engaged in the act of combing, brushing, arranging, etc., to the individual's hair in the process of selling and servicing such wigs, and (2) be actually performing their services for compensation. We note this specifically since the law of this State does not refer to nor make specific mention of "compensation" in regard to the classification of such services and the scope of such activities. It is further observed that the practice contemplated by that statute relates to the actual combing, brushing and arranging of the individual's hair and not to the wig itself as we understand that term. This, of course, becomes a question of fact as much as a legal question and from that standpoint would appear to have the same application to a millinery or other retail establishments which sell directly to the public other items which require instructions as to proper wear. We

see very little distinction between the sale of wigs and the sale of hats as far as that segment of your inquiry is concerned. The issue involved relates only to the combing, brushing and arranging of the customer's hair. We therefore, assume that is the issue which is presented by your inquiry.

We would note the provisions of Section 43-11-01 of the North Dakota Century Code which, in part, define the term "Cosmetology," as follows:

"DEFINITIONS. In this chapter unless the context or subject matter thereof otherwise requires:

1. 'Cosmetology' as used in this chapter is hereby defined and construed to mean any one or combination of practices generally and usually heretofore and hereafter performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding him or herself out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology shall be defined and shall include - but otherwise not be limited thereby - the following or any one or a combination of practices, to wit: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work on the scalp, face, neck, arms, bust or upper part of the body, or manicuring the nails of any person;

* * *"

In view of the foregoing definition, it is clear that the activities which gave rise and reason to the Attorney General's opinion of the state of Missouri would also be the basis of the opinion of this office. It appears quite clearly that the brushing, arranging and combing of an individual's hair, and in the instance of North Dakota law, without regard to compensation therefor, is contemplated by the statute and regulations governing cosmetologists and hairdressers in this State. The essential difference in the Missouri law and that of North Dakota is that in this State the element of compensation is made a condition to the applicability of the chapter and the activity for which the same was clearly designed to apply.

Again, noting that the actual practice of combing, brushing and arranging of an individual's hair is a question of fact, it would appear, and it is our conclusion, that such practices fall within the activities referred to in Chapter 43-11 of the North Dakota Century Code and are regulated thereby. In that sense, it would appear that one engaged in such activities, whether the same be in connection with the sale or with the servicing of such wigs or not, would be required to obtain a certificate of registration as is required by section 43-11-13. This does not mean, however, that one merely

engaged in the sale and servicing of wigs would be required to obtain such certificate of registration unless the practices specified by the statute are also offered or practiced. Accordingly, it would appear that a retail outlet which engages in such activity itself, or holds out personnel under their control, actually engaging in such activity, would be required to obtain a manager-operator's license as required by section 43-11-26 of the North Dakota Century Code. It is possible, of course, that one who has obtained a manager-operator's license may operate a business and legally engage in such practices within the physical confines of a retail outlet store as an independent operator under lease or other similar arrangement, in which instance the retail outlet store would not need to obtain such license.

We would also note in passing that we are not aware of any statute which would classify persons as may be known as "professional consultant," "professional wig artist," "professional stylist" or an "expert stylist," as the same may relate to laws regulating hairdressers and cosmetologists. It would not appear that the use of such titles would alter the conclusions reached in the instant issue, however, and that such persons, holding themselves out to the public in such manner, would be equally governed by the laws applicable to hairdressers and cosmetologists as outlined and referred to herein.

We trust that the foregoing commentary will adequately set forth the opinion of this office with regard to the inquiry which you have submitted and that the same will be of interest and assistance to you.

HELGI JOHANNESON

Attorney General