



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 17, 1988

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

LO-88-96

Dear Ms. McCrorey:

You ask three questions about barbering activities at privately owned correctional facilities. Your first question is:

Will privately owned correctional facilities be required to have barber shop permits?

Section 3 of article 8407a provides in part:

Sec. 3. (a) No person may own, operate, or manage a barber shop without a barber shop permit issued by the board.

(b) Any firm, corporation or person who opens a new barber shop shall within three days submit an application in writing to the board for a temporary barber shop permit together with an inspection fee not to exceed \$50. The applicant must place in his application the permanent address of his shop including a legal description of the premises to be licensed and such other information as shall be required by the board.

(c) The board shall issue a barber shop permit to an applicant who holds a valid class A barber license and whose shop meets the minimum health standards for barber shops as promulgated by the State Department of

Public Health and all rules and regulations of the board. (Emphasis added.)

The "board" referred to in the above provisions is the State Board of Barber Examiners. V.T.C.S. art. 8407a, § 4(d). Subsection (i) of section 4 defines "person" as "any individual, association, firm, corporation, partnership, or other legal entity." Subsection (c) of section 4 defines "barbershop" as "any place where barbering is practiced, offered, or attempted to be practiced except when such place is duly licensed as a barber school or college."¹

Subsection (b) of section 4 gives an extensive definition of what acts constitute barbering. Subsection (b) provides in part:

'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:

. . . .

(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),

. . . .

(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.)

1. We assume that no issues are presented here with respect to the facilities in question qualifying as barber schools or colleges. See V.T.C.S. art. 8407a, § 9.

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Attorney General Opinion MW-526 (1982) ruled that barber shop facilities located in the facilities of the Department of Mental Health and Retardation must be licensed under article 8407a. A recent letter opinion of this office noted specifically that charging or receiving a benefit for the services provided is not a prerequisite to performing barbering services within the meaning of section 4. See Attorney General Letter Opinion LO-88-77 (July 7, 1988). In view of the prior opinions of this office and the statutory provisions cited above, we conclude that the answer to your first question is yes.

Your second question is:

Will those cutting hair in such facilities be required to be licensed barbers?

Section 1 of article 8407a provides:

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.

Section 2 provides in part:

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.

See also subsection (c) of section 3 (quoted in full above) which provides in part: "[t]he board shall issue a barber shop permit to an applicant who holds a valid class A barber license."

Section 6 provides for the following exemptions from the operation 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 State 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.

Assuming that none of the section 4 exemptions would apply to persons performing barbering services at private correctional facilities, we conclude that those performing such services would be required to be licensed under article 8407a.

Your third question is:

Will they come under the full jurisdiction of the State Board of Barbers Examiners, to be inspected by our Inspectors and to abide by the rules and regulations governing sterilization and sanitation?

(We assume that no issues are presented here with respect to whether the facilities in question would be subject to the jurisdiction of the Texas Cosmetology Commission. See V.T.C.S. art. 8402.)

Section 28, subsection (a) of article 8407a provides 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.

In light of our conclusions above, that places where barbering services are performed at private correctional facilities are "barber shops" within the meaning of article 8407a and that persons cutting hair there must be licensed, we conclude in response to your third question that those locations and persons would come under the full jurisdiction of the State Board of Barber Examiners as is provided for in section 28 and generally in article 8407a. See, e.g., sections 3, 21 and 22, and 24, providing for issuance of barber shop permits; refusal, suspension or revocation of certificates of registration; inspections; actions for violations of or noncompliance with the Act; offenses and penalties; etc. See also Attorney General Letter Opinion LO-88-77 (July 7, 1988).

Very truly yours,


Sarah Woelk, Chief
Letter Opinion Section


Rick Gilpin, Chairman
Opinion Committee

APPROVED: OPINION COMMITTEE

SW/RG/WW/bc

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