2817.

COSMETOLOGY, SCHOOL OF — WHERE ENROLLED STUDENTS PERFORM BEAUTY CULTURAL WORK UPON PUBLIC FOR COMPENSATION—SUCH SCHOOL ENGAGED IN PRACTICE OF COSMETOLOGY—BOARD OF COSMETOLOGY EMPOWERED TO ADOPT RULES TO FIX MINIMUM NUMBER OF HOURS FOR STUDY OF ANY BRANCH OF COSMETOLOGY—SECTION 1082-3 G. C.

MINIMUM WAGE LAW, SECTION 154-45d ET SEQ. G. C.—WAGE RATE—FEMALES—MINORS—STATUS WHERE STUDENTS PERFORM SERVICES UPON PUBLIC AND CHARGE IS MADE BY SUCH SCHOOL.

SYLLABUS:

1. *A school of cosmetology, wherein beauty cultural work is performed*

upon the public for compensation by students enrolled therein is, together with students performing such services, engaged in the practice of cosmetology.

2. *The Board of Cosmetology is empowered, under the provisions of section* 1082-3, *General Code, to adopt rules fixing the minimum number of hours which must be maintained by a school of cosmetology for the study of any branch of cosmetology.*

3. *Under the provisions of the Minimum Wage Law of Ohio (section* 154-45*d, et seq., General Code), a wage rate may be fixed for females and/or minors who are enrolled as students in a school of cosmetology if such females and/or minors, in connection with their courses of study, perform beauty cultural work upon the public for which a charge is made by such school.*

Columbus, Ohio, September 24, 1940.

Hon. George A. Strain,
Director, Department of Industrial Relations, and

Hon. Olive M. Sprague,
Chairman, State Board of Cosmetology,
Columbus, Ohio.

Dear Sir and Madam:

This will acknowledge receipt of your recent letter, wherein you request my opinion on the following questions:

> "1. If a student, enrolled in a school of cosmetology, does beauty cultural work upon the public for which a charge is made to the public, is that student and school engaged in the practice of cosmetology?
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> 2. Is a school of cosmetology permitted to engage in the practice of cosmetology?
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> 3. Is such practice in violation of the Cosmetology Act of Ohio?
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> 4. Is the Board of Cosmetology cloaked with sufficient authority to adopt rules and standards regulating the number of hours, either by way of minimum or maximum, of practical training in any one or all of the branches of cosmetology taught in any school of cosmetology?
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> 5. Under the Minimum Wage Law of the State of Ohio, can a wage rate be fixed for females and minors who are enrolled in a school of cosmetology, and who pay or agree to pay, a tuition

fee for a course of learning in cosmetology, when such students render services on the public for which a charge is made by the school, for the ostensible reason of acquiring practical experience and learning, which is indispensably necessary in obtaining sufficient credits to become eligible to take the examination for an operator's license to practice cosmetology in the State of Ohio?"

Paragraph (b) of section 1082-1, General Code, which defines the practice of cosmetology, reads in part as follows:

"The practice of cosmetology is defined to be and includes any or all work done for compensation by any person, which work is generally and usually performed by so-called hairdressers, cosmetologists, cosmeticians or beauty culturists, and however denominated, in so-called hairdressing and beauty shops, ordinarily patronized by women; which work is for the embellishment, cleanliness, and beautification of the woman's hair, such as arranging, dressing, curling, waving, permanent waving, cleansing, cutting, singeing, bleaching, coloring, or similar work thereon and thereabout, and the massaging, cleansing, stimulating, manipulating, exercising or similar work upon the scalp, face, arms or hands, by the use of mechanical or electrically operated apparatus or appliances, or cosmetics, preparation, tonics, antiseptics, creams or lotions, and of manicuring the nails, which enumerated practices shall be inclusive of the practice of beauty culture but not in limitation thereof."

You will note that the above section defines the practice of cosmetology as work done for compensation by any person, et cetera. The definition does not require that the person who performs the work be compensated; it simply provides that the work must be done by a person and that compensation must be paid therefor.

It will also be noted in connection therewith, that the statute does not define the practice of cosmetology as work generally and usually performed by cosmetologists, et cetera; but states that *all work done by any person,* which work is generally and usually performed by so-called hair-dressers, cosmetologists, et cetera, shall constitute the practice of cosmetology.

Also pertinent to your first question are the provisions of section 1082-2, General Code, which section reads as follows:

"On and after 60 days after this law becomes in effect and the state board of cosmetology as herein provided for, has been duly appointed and qualified, every person, firm or corporation who shall conduct or operate a beauty parlor or practice cosmetology for compensation, either as manager, operator, or manicurist; without license, issued as herein provided, or any person, firm or corpora-

> tion who shall employ a manager, operator, or manicurist, without a license; aid or abet any person in violating the law or obtaining a license fraudulently, or falsely pretend to be licensed, or shall violate the law or any of the sanitary rules for the regulation of the practice of cosmetology, shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00). *Provided, however, that nothing in this act shall be construed to prohibit any student in any school of cosmetology legally established under the provisions of this act, from engaging in said school and as such student, in work connected with any branch or any branches of cosmetology taught in said school."* (Emphasis mine.)

That the General Assembly recognized the fact that schools of cosmetology would in some instance make a charge to patrons for the rendition of services is clearly manifest from the above statute. By including therein, the language emphasized, that body clearly must have intended that the statute defining the practice of cosmetology, when standing alone, be construed to include students enrolled in schools of cosmetology, if the work done by them in connection with any branch or branches of cosmetology was compensated for. Otherwise, the enactment of the proviso would have been unnecessary.

It is a familiar rule of statutory construction that careless and needless tautology should not be ascribed to the lawmaking body. In 38 O. Jur., page 786, it is said:

> "A proviso in an act may properly be considered in giving construction to other portions of the same act, since the intention of the legislature is to be ascertained not only from the body of the statute, but from the provisos as well."

In view of the foregoing observation, it would therefore appear that students enrolled in a school of cosmetology who perform any of the services enumerated in section 1082-1 of the General Code, if a charge is made for such services by said school, would be engaged in the practice of cosmetology as defined in said section, regardless of whether or not such students individually receive compensation for the performance of such work.

I come now to a consideration of your second question. In regard thereto, I have already pointed out that the language of section 1082-2, General Code, clearly contemplates that schools may make charges for services rendered by students and that thereby the rendition of such services comes within the practice of cosmetology. Therefore, since students performing any work connected with the practice of cosmetology for which a charge is made by the

school in which such students are enrolled are engaged in the practice of cosmetology, it would naturally follow that the school itself, under such circumstances, would be engaged in such practice.

The answer to your second question disposes of your third question.

Your fourth question deals with the powers of the Board of Cosmetology. It is a fundamental principle of law that public officers have only such powers as are expressly conferred upon them by statute and, in addition thereto, such implied powers as may be necessary to carry into effect those expressly granted.

The powers granted the Board of Cosmetology with respect to schools are contained in Section 1082-3, General Code, which, in so far as the same is pertinent hereto, reads:

> "(d) *** It shall be the duty of the board to adopt rules for carrying out the provisions of this act, for conducting examination of applicants for license, and governing the recognition of, and the credits to be given to, the study of cosmetology, or any branch thereof, in a school of cosmetology, licensed under the laws of this or another state or territory of the United States or the District of Columbia, and to adopt such sanitary rules as may be authorized by the state department of health with particular reference to the precautions to be employed to prevent the creating or spreading of infectious or contagious diseases in beauty parlors or schools of cosmetology, or in the practice of cosmetology."

While it might be said that the language of the above statute and the arrangement of the terms contained therein are somewhat confusing, yet upon careful analysis the words thereof convey a clear and definite meaning.

Under said statute, the duty to adopt rules governing the recognition of and the credits to be given to the study of cosmetology or any of its branches, in a school of cosmetology, is expressly enjoined upon the Board of Cosmetology. In other words, said Board is required to adopt rules specifically setting forth the credits which will be given to the study of any branch of cosmetology taught in a school of cosmetology.

The word "credits", when used in connection with a college curriculum or a course of study given in a school, is commonly understood to mean the credit toward the securing of a degree or toward admission to an institution of higher learning which is awarded for time given to the study of a certain

subject. It would, therefore, appear that the Board of Cosmetology is required to adopt rules providing that applicants for a license have a certain number of credits before they may be admitted to an examination for such license.

In order to determine the credits which should properly be given to the study of any branch of cosmetology in any school and to adopt rules with respect thereto, it obviously becomes necessary for the Board not only to ascertain the number of hours devoted to the study of each branch of cosmetology in each school, but to fix a minimum number of hours of study for each branch before the study of such branch can be accorded proper recognition and credits given therefor. Therefore, the Board of Cosmetology, being required to adopt rules governing the credits to be given the study of any branch of cosmetology, could, in the exercise of the power conferred upon it, certainly provide by rule that unless a student devoted a minimum number of hours to the study of any branch of cosmetology no credit would be given to said student for the study of such branch, and it would therefore follow that the Board is empowered to adopt a rule fixing the minimum number of hours which must be maintained by a school of cosmetology for the study of any branch of cosmetology.

The requirements for schools are contained in section 1082-17, General Code, which reads in part as follows:

> "*** Schools of cosmetology shall fulfill the following requirements: (a) It shall maintain a school term of not less than seven hundred fifty (750) hours, for the majority of the practices of cosmetology, and shall maintain a course of practical training and technical instruction equal to the requirements for examination for license as a cosmetologist as set forth in section 7 herein; (b) it shall possess apparatus and equipment sufficient for the ready and full teaching of all subjects of its curriculum; (c) and shall maintain cosmetologists licensed as managers, as instructors of the practices of cosmetology; (d) it shall keep a daily record of the attendance of each student, and a record devoted to the different practices, and shall establish grades, and hold examinations before issuance of diplomas."

In view of the above express statutory provision fixing the minimum aggregate number of hours which must be maintained by a school, it is clear that the Board may not by rule make minimum requirements for the different branches of study, the aggregate number of hours of which would exceed the above limitation.

Obviously, a school may maintain a course of study consisting of a greater number of hours than that required by law if it so chooses and devote more hours to the teaching of any branch than that required by the rule of the Board.

Your last question deals with the powers of the Director of Industrial Relations and the Wage Board, provided for in section 154-45h, General Code. Said section reads in part as follows:

> "6. A wage board may recommend a suitable scale of rates for learners and apprentices in any occupation or occupations, which scale of learners' and apprentices' rates may be less than the regular minimum fair wage rates recommended for experienced women or minor workers in such occupation or occupations."

Sections 154-45i and 154-45j, General Code, in so far as the same are material hereto, read:

Section 154-45i.

> "A report from a wage board shall be submitted to the director who shall within ten days confer with the superintendent and accept or reject such report. If the report is rejected the director shall resubmit the matter to the same wage board or to a new wage board with a statement of the reasons for the resubmission. If the report is accepted it shall be published together with such proposed administrative regulations as the director after conferring with the superintendent may deem appropriate to implement the report of the wage board and to safeguard the minimum fair wage standards to be established, and notice shall be given of a public hearing to be held by the director or the superintendent not sooner than fifteen nor more than thirty days after such publication at which all persons in favor of or opposed to the recommendations contained in such report or in such proposed regulations may be heard."

Section 154-45j.

> "Within ten days after such hearing the director shall confer with the superintendent and approve or disapprove the report of the wage board. If the report is disapproved the director may resubmit the matter to the same wage board or to a new wage board. If the report is approved the director shall make a directory order which shall define minimum fair wages in the occupation or occupations as recommended in the report of the wage board and which shall include such proposed administrative regulations as the director may deem appropriate to implement the report of the wage standards established. Such administrative regulations may include among other things, regulations defining and governing learners and apprentices, their rates, number, proportion or length of service, piece rates or their relation to time rates,

> overtime or part-time rates, bonuses or special pay for special or extra work, deductions for board, lodging, apparel or other items or services supplied by the employer, and other special conditions or circumstances; ***."

It is to be observed that both the above sections provide for a scale of rates for learners and apprentices in occupations. Neither the term "learner" nor "apprentice" is defined in the Minimum Wage Act. A definition of the word "apprentice" does appear in section 1082-1, General Code, which section is part of the Cosmetology Act. In said section that term is defined as "any person who is engaged in learning or acquiring knowledge of the occupation of a cosmetologist in a beauty parlor." In connection therewith, it will be observed, however, that nowhere in said Act does the word "apprentice" appear, except as above noted.

A reference to section 1082-5, General Code, discloses that applicants for an operator's license must in all cases have attended a school of cosmetology. Said section in this respect provides as follows:

> "(b) Applicants for an operator's license shall not be less than 16 years of age; have a total experience of at least seven hundred and fifty hours of instruction in the majority of the branches of cosmetology or a proportionate number of hours in any lesser group of subjects related to each other in a school of cosmetology; be of good moral character, and shall have an education equivalent to the eighth grade of public school, and shall pay the required fee."

Obviously, therefore, the definition of "apprentice", as the same appears in the Cosmetology Act is of no help in the instant case.

It is a familiar and fundamental rule of statutory construction that, in the absence of a statutory definition, a word or term should be given its common and ordinary meaning. (See 37 O. Jur. 542.) The Century Dictionary defines the term "learner" as follows:

> "One who learns; one who acquires knowledge or is taught; a scholar; a pupil."

An "occupation" is defined in section 154-45d, General Code, as follows:

> "6. 'Occupation' shall mean an industry, trade or business or branch thereof or class of work therein in which women or minors are gainfully employed, but shall not include domestic service in the home of the employer or labor on a farm."

As stated above, a student is engaged in the practice of cosmetology if the school in which she is enrolled makes a charge for such work performed by her which is connected with any branch or branches of cosmetology taught in such school. That women and minors are gainfully employed in the practice of cosmetology certainly cannot be disputed. It becomes necessary therefore, to determine whether or not the practice of cosmetology is an occupation within the meaning of that term as above defined.

The statute, as above pointed out, defines an occupation as "an industry, trade or business." In Webster's New International Dictionary, the terms "business" and "trade" are defined as follows:

> " 'Business'—that which busies, or engages time, attention, or labor, as a principal serious concern or interest. Specif: a constant employment; regular occupation; work, as business of life, business before pleasure. To be in particular occupation or employment habitually engaged in for a livelihood or gain."
>
> " 'Trade'—the business which a person has learned and which he engages in for procuring subsistence, or for profit; occupation, esp. mechanical employment as distinguished from the liberal arts, the learned professions and agriculture."

It might be contended that, inasmuch as the laws regulating the practice of cosmetology require all who desire to engage therein to first pass an examination and procure a license, cosmetology is a profession and would therefore be excepted from the above definition of a "trade". In regard thereto, your attention is directed to the case of The State, ex rel. Bricker, Attorney General, v. Buhl Optical Co., 131 O. S. 217, wherein it is stated on this point:

> "There are a number of callings in which one may not engage until he has passed an examination and received a license or certificate, for instance, barbering (Section 1081-1 et seq., General Code), embalming (Section 1335-1 et seq., General Code), cosmetology (Section 1082-1 et seq., General Code), surveying (Section 1083-1 et seq., General Code), inspection of steam boilers (Section 1058-1 et seq., General Code), steam engineers (Section 1040 et seq., General Code), aircraft piloting (Section 6310-38 et seq., General Code), pharmacy (Section 1296 et seq., General Code), real estate brokerage (Section 6373-25 et seq., General Code), and nursing (Section 1295-1 et seq., General Code). To hold that in none of these, a corporation organized for legitimate purposes could employ persons so licensed would be going too far. *A trade, business or ordinary calling is not changed by the requirement of licensing.*" (Emphasis mine.)

In view of the above observations, it seems apparent that the practice of cosmetology is an occupation within the meaning of that term as defined in section 154-45d, supra, and it would therefore follow that students enrolled in a school of cosmetology who perform any of the operations set forth in paragraph (b) of section 1082-1, supra, if a charge is made by said school for the services rendered by such students, are engaged or employed in an occupation.

Summarizing, it is therefore my opinion that:

1. A school of cosmetology, wherein beauty cultural work is performed upon the public for compensation by students enrolled therein is, together with students performing such services, engaged in the practice of cosmetology.

2. The Board of Cosmetology is empowered, under the provisions of section 1082-3, General Code, to adopt rules fixing the minimum number of hours which must be maintained by a school of cosmetology for the study of any branch of cosmetology.

3. Under the provisions of the Minimum Wage Law of Ohio (sections 154-45d, et seq., General Code), a wage rate may be fixed for females and/or minors who are enrolled as students in a school of cosmetology if such females and/or minors, in connection with their courses of study, perform beauty cultural work upon the public for which a charge is made by such school.

Respectfully,

THOMAS J. HERBERT,
Attorney General.