

Opinion No. 53-5824

October 19, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Agnes Martin Secretary-Treasurer State Board of Cosmetologists P. O. Box 130 Santa Fe, New Mexico

{*232} We are in receipt of your letter of October 3, 1953, in which you request an opinion concerning the applicability of § 51-2008(c) New Mexico Statutes Annotated, 1941 Compilation, which is Chapter 21, Section 8, of the 1937 New Mexico Session Laws to persons demonstrating cosmetic preparations in the State of New Mexico. You enclosed with your request a letter from Mr. L. {*233} W. McKay, General Manager, NY LA Division, United Enterprises, Inc., in which he pleads for the abstinence of enforcement by your Board against his Company of the provision of this Act.

Mr. McKay argues in his letter that the Act has as its intent the elimination of "fly-by-night" cosmetic operators and demonstrators and would not apply to reputable firms such as his. The pertinent part of the Act reads as follows:

"(c). Any person not licensed under any of the other provisions of this Act (§§ 51-2001 -- 51-2030), who demonstrates in any manner any lotions, creams, or other preparations which are or may be used in any of the arts of cosmetic therapy, whether gratuitously or for compensation, shall first obtain from the board a demonstrator's certificate. The board shall issue such certificate upon the payment of a fee of one hundred dollars (\$ 100); and provided further that said board may promulgate such rules and regulations as it may deem proper, if any, further governing the issuance and/or retention of such certificates. Each demonstrator's certificate shall be in force for a period of one (1) year from the date of its issuance unless revoked by the board for cause."

It will be noted that this act applies to all operators who demonstrate cosmetics. It does not require that such cosmetics be sold nor does it define the type of demonstration intended to be covered in the act. The validity of acts of this nature are uniformly upheld by reason of the duty of the State to protect the public health under the State's police powers. We believe that the act does not authorize you to discriminate or prejudge the nature of the demonstrator, as to his permanency nor his good faith in applying for the license. In the event it is established that a person is demonstrating and his intent is not in the best interest of the public, this act gives your Board the right to refuse his license upon proper cause shown. In the event you had evidence, prior to the issuance of said license, of bad faith on the part of the demonstrator, you would not be required under the law to issue the license in the first instance.

It is, therefore, the opinion of this office that your Board has no authority to waive the licensing of any person who demonstrates cosmetics in this State and that the license

fee is a mandatory prerequisite to the operation of any demonstration in this State, regardless of the status of the Company whom they represent.

We sincerely hope that this answers your inquiry.