

## **Opinion No. 62-109**

August 16, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General F. Harlan Flint, Assistant Attorney General

**TO:** Mr. Charles L. Craven, Assistant District Attorney, County Court House, Aztec, New Mexico

### **QUESTION**

#### QUESTIONS

1. Does the New Mexico State Barber Board have the power, by rules and regulations, to require that no person can become an instructor in a barber school without having ten hours teaching credits from an accredited college or university?
2. Is a rule or regulation valid which provides that no barber school or student or instructor therein shall collect any fee for barbering services rendered to the public?
3. If the answer to the second question is in the negative are the gross receipts derived from such barbering services subject to the New Mexico Emergency School Tax Act?

#### CONCLUSIONS

1. No.
2. No.
3. Yes.

### **OPINION**

#### ANALYSIS

Questions number one and two are substantially disposed of by Attorney General's Opinion No. 57-245. This office concluded on the basis of the same statutes now in existence that it was beyond the power of the State Barber's Board to impose the specific education requirements contemplated by question number one. We reaffirm the conclusion expressed in the above-mentioned opinion and advise that since such a rule or regulation is illegal the Barber Board may impose no administrative or legal sanctions upon a barber school which is operating contrary to such void rule or regulation.

It was also concluded in the above-mentioned opinion of this office that a regulation prohibiting charges by a barber college for haircuts or other services performed by the

staff or student personnel is illegal and void. Again, we find no reason for reversing or revising said opinion. It is therefore proper for a barber college to levy such charges to the public as they may deem necessary. We recognize that the Barber Board is authorized by Section 67-14-36, N.M.S.A., 1953 Compilation to approve price agreements submitted by an organized group of barbers in a given county. We point out, however, that the mentioned statutory section does not confer upon the Barber Board the power to regulate the fees charged by student barbers attending an authorized barber school. See Attorney General's Opinion No. 57-153.

In response to your third question we conclude that barber schools are subject to the Emergency School Tax in the amount of 2% of the gross receipts received as a result of barbering services rendered to the public. The applicable section of the statutes is Section 72-16-4.10, N.M.S.A., 1953 Compilation. There is no exemption provided to entities such as a barber school. See Section 72-16-15, N.M.S.A., 1953 Compilation. Our conclusion would be the same regardless of whether the barber school is operating for profit or is a non-profit corporation. This is true because the 1961 Legislature repealed the exemption which was previously given to non-profit corporations by the above mentioned Section 72-16-15, *supra*.