

Opinion No. 63-97

August 9, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mrs. Dorothy W. Neeley Secretary-Treasurer State Board of Cosmetologists Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Are the establishment licenses referred to in Section 67-17-8.1 N.M.S.A., 1953 Compilation (P.S.), and the establishment licenses referred to in Section 67-17-16 N.M.S.A., 1953 Compilation (P.S.), two separate and distinct establishment licenses, one being issued for the operation of a cosmetological establishment, and the other being issued for the operation of "independent businesses within an establishment place of business," and if so, is the issuance of two (2) establishment licenses required for the operation of a cosmetological establishment employing operators, and also renting space for operation of independent businesses jointly?

2. Is a shop owner (who had previously secured an establishment license to operate a cosmetological establishment) and converts to rental of space for "operating independent businesses" required to secure another establishment license for this purpose?

3. Is the establishment license required by Section 67-17-16 supra, beginning January 1, 1964, to be issued annually?

CONCLUSIONS

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

OPINION

{*211} ANALYSIS

At the recent session of the New Mexico Legislature (1963), there was enacted House Bill 98 (Chapter 326) which legislation became effective on June 7, 1963.

The new law amended the provisions of (old) Section 67-17-16 N.M.S.A., 1953 Compilation, repealed (old) Section 67-17-8, N.M.S.A., 1953 Compilation, and enacted a new Section 67-17-8.1.

Section 67-17-16 as amended, in pertinent part sets forth the identical language in pertinent part of (old) Section 67-17-16, to-wit:

"For issuing an establishment license to any cosmetological establishment, the fee shall be \$ 100.00."

New Section 67-17-8.1 (P.S.) in pertinent part reads:

"B. No person shall practice any of the classifications described in the Cosmetology Act unless he is the proprietor of, or employed by, an establishment displaying a valid shop card, except that one or more operators may conduct independent businesses within an establishment if the owner procures the proper establishment license and {212} shop card and remains responsible for compliance with the Cosmetology Act and regulations of the Board. Operators conducting independent businesses within an establishment need not procure another establishment license. (Emphasis ours).

"C. For issuing an establishment license to any cosmetological establishment, the fee shall be \$ 100.00. For issuing an establishment license to any cosmetological establishment allowing operators to conduct independent businesses the fee shall be \$ 100.00 beginning January 1, 1964."

Prior to the said recent enactment of Section 67-17-8.1, supra, which statute became effective June 7, 1963, no statute existed to cover the subject of "independent businesses within an establishment."

Presumably, the Legislature was cognizant of the then existing statutes pertaining to license fees for the conduct of cosmetological establishments when it enacted the entirely new Section 67-17-8.1, supra.

In pursuance and amplification of such presumption, it is our opinion that it was the legislative intent to require the payment of a separate, a different and entirely new license fee.

The holder of such a license no doubt correctly anticipates a substantial increase in the profits of his establishment to be derived from the rental of booths or parts of his establishment to the operators of independent businesses.

Not so incidentally, the supervision and policing of the new establishments will necessarily entail considerable expense for which your department should be compensated. **53 C.J.S. Licenses**, Section 14, pages 496-498, states:

"The rules relating to the amendment or repeal of statutes and ordinances in general apply to the amendment of an act or ordinance requiring a license or imposing a license fee or occupation tax, or to the repeal of such an act or ordinance . . . depends on the intention of the legislature. . .

Repeals by implication are not favored and the presumption is against an intention to repeal. However, a repeal may be made by implication where the material provisions of the subsequent statute or ordinance are utterly repugnant to, and inconsistent with, the prior statute or ordinance, or where, although the terms are not repugnant or inconsistent, **the subsequent statute or ordinance covers the whole subject matter of the earlier statute** or ordinance, embraces new provisions, and plainly shows that it was intended, not merely as a substitute for the earlier statute or ordinance, **but to constitute the exclusive law of the state or municipality on the subject.. .**"
(Emphasis supplied)

The law as stated in C.J.S., supra, is found under the general heading of licenses. To our mind, the questions posed by the query herein fall within such category. Although some provisions heretofore existing have been amended and others repealed, our new statute, supra, covering the subject of cosmetology licenses now **constitutes the exclusive law of the State of New Mexico.**

Answering your questions in numerical order you are advised:

{*213} 1. The establishment licenses referred to in Section 67-17-8.1, N.M.S.A., 1953 Compilation (P.S.), and the establishment licenses referred to in Section 67-17-16, N.M.S.A., 1953 Compilation (P.S.) are two separate and distinct licenses.

2. A shop owner who has previously secured an establishment license entitling him to operate a cosmetological establishment and converts, by virtue of Section 67-17-8.1, supra, to the rental of space for "operating independent businesses" is required to secure an additional establishment license.

3. The answer to your question No. 3 is in the negative. Such license is not required to be issued annually.

It is our understanding that before (old) Section 67-17-16 was amended by new Section 67-17-16 becoming effective June 7, 1963, you required the payment of the sum of \$ 100.00 at the time of the issuance of an original license but only a \$ 10.00 fee each year thereafter. We feel that the practice which you followed under the old law was proper and should be continued.

By: Carl P. Dunifon

Assistant Attorney General