

**Opinion No. 37-1533**

February 18, 1937

**BY:** FRANK H. PATTON, Attorney General

**TO:** State Board of Barber Examiners Santa Fe, New Mexico. Attention: Mr. T. M. Salmon.

{\*52} Under date of February 15, in answer to an inquiry from you, we handed down an opinion, No. 1529. in which it was ruled that under Section 2 of Chapter 111, Laws of 1935, a person operating a machine used to massage the scalp and stimulate the circulation was engaged in the business of barbering and required to pay an application fee of \$ 100.00 under Section 10 of the same act. The opinion was predicated upon a definition of barbering contained in Section 2, which enumerates various activities constituting barbering, and, among other things, contains the following language:

"\* \* \* giving facial, and scalp massage or treatments with oils, creams, lotions, or other preparations, either by hand or mechanical appliances \* \* \*".

Since that opinion has been written, it has been called to our attention that the applicant uses no oils, creams, lotions or other preparations, but that the treatment is done only by the machine. Upon reconsideration of the question, Opinion No. 1529 is withdrawn. It is our opinion that in order to come under the provisions of the language above quoted, creams, lotions or other preparations as set out in the act would have to be used. Since the applicant is not engaged in the practice of barbering as defined in Section 2, it necessarily follows that the fee of \$ 100.00 under Section 10 should not be exacted.

By: RICHARD E. MANSON,

Asst. Atty. Gen.