

Opinion No. 37-1639

May 12, 1937

BY: FRANK H. PATTON, Attorney General

TO: Miss Edna Peterson State Board of Hairdressers and Beauty Culturists
Albuquerque, New Mexico

{*92} This is to acknowledge receipt of your letter of May 10th.

I thank you very much for calling my attention to Chapter 221, Laws of 1937, the same being House Bill 57. I knew the bill had been introduced and passed, but did not know that it carried the emergency clause. Accordingly, in so far as Opinion No. 1633 dated May 7 applies {*93} to the inquiry in your letter of May 5, the same is hereby withdrawn.

According to the statement furnished us by way of a letter from Gage, Hillix, Hodges & Cowherd, attorneys at law, the demonstrators inquired about in your inquiry of May 5 demonstrate certain products which we assume for the purpose of this opinion are used or may be used in cosmetic therapy. These demonstrations are given free of charge in order to effect sales of the products demonstrated. After the demonstration is given, orders for the products are taken in Albuquerque and filled at Kansas City, Missouri. So far as the sale is concerned, it is clearly a transaction in interstate commerce. As I understand your inquiry, these demonstrators claim they do not come under the provisions of Section 8 (c) of Chapter 221, Laws of 1937, for the reason that the demonstration is part of a transaction in interstate commerce.

I am unable to agree with this contention. Section 8 (c) of Chapter 221 of the Laws of 1937 requires a license for any person demonstrating products that may be used in cosmetic therapy. It reads as follows:

"(c) Any person not licensed under any of the other provisions of this act, 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; 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 year from the date of its issuance unless revoked by the Board for cause."

It is clear from the wording of the section above quoted that the license is not required for the sale of these products. Rather, it is required for their demonstration. Undoubtedly, the demonstrators' contention that a license imposed for the sale of such goods would be a burden on interstate commerce is sound. However, it does not follow that the state, in the lawful exercise of its police powers, may not impose regulations

upon the demonstration of such products, the theory being that it is in some way connected with public health. For example, certain face lotions might be harmful in their use and, therefore, subject to reasonable regulation. The section above quoted does not purport to regulate the sale of these products. They could doubtless be sold without demonstration. However, if the broker of these products desires to promote their sale by demonstration, he must comply with the regulations above set out.

Your attention is called to the fact that this opinion must be confined to cases where products that are covered in Chapter 227, Laws of 1937, are being demonstrated. We are unable to tell from the correspondence just what products were being used by the demonstrators, and merely assume for the purpose of this opinion that they were such products as contemplated by the act above quoted.

Trusting that this answers your questions fully, I am

By: RICHARD E. MANSON,

Asst. Atty. Gen.