1951 O. A. G.

I see no difference in the rules of law to be applied in regard to civil cases or criminal cases. However, it is to be noted that some of the foregoing rules might have varied application depending on whether the case was civil or criminal. In summation, it is my opinion that it is not improper for a member of the legislature to act as a special judge and that whether it is proper or not for a member of the legislature to act as a judge pro tempore is doubtful.

OFFICIAL OPINION NO. 34

April 12, 1951.

Mr. William R. Allen,
Secretary,
Indiana State Board of
Barber Examiners,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

Your letter of 5 April 1951 has been received, requesting an Official Opinion on the following questions:

"In view of the Amendment (Senate Bill 59) to the 1951 Beauty Culturist Act, authorizing Beauty Culturists to cut women's hair, is this Board authorized to issue hair cutter's license under the Barber Law? If so, for what purpose shall such hair cutter's License be issued?"

Senate Bill 59 referred to in your question is Chapter 76 of the Acts of 1951, and it amends Section 2 of the Beauty Culturist Law, same being Section 63-1802, Burns 1943 Replacement. The provision pertinent to this inquiry, is Clause (3) of said Section, which, among other things, defines the practice of beauty culturists to be: "To cut, trim and style the hair of any female—at any time." Prior to its amendment in 1951 this Clause read: "To cut, clip or trim the hair combined with a permanent wave, and at no other time."

Since 1933, the Barber's statute, Section 10, Chapter 48 Acts 1933, same being Section 63-310, Burns 1943 Replace-
ment, Clause (4) has contained the provision “hairstylists and beauty culturists insofar as their usual and ordinary vocation and profession is concerned, including light hair trimming incidental to waving of all kind, which shall not include hair cutting”, are exempted from the provisions of the Barber Act while such persons are in the proper discharge of their professional duties.

Section 4 of the Act (Section 63-304 Burns 1943 Replacement) prescribes that hair cutters shall have the same qualifications as applicants for Barber’s certificates, with the exceptions of shaving and handling of a razor. Section 12 of the old Barber’s Act, same being Section 63-312, Burns Replacement, provides for fees for issuance and renewal of hair cutter’s certificates. The provisions above referred to in Section 4 of the Barber Act, and in Section 12 of the Barber Act, were reenacted in the amendment to said Barber law by Sections 2 and 3 of Chapter 289 of the Acts of 1951, without any material amendment, except to increase the fee.

It is to be observed, the amendment to the Beauty Culturists Act above referred to, does in one respect broaden the power of the authority of beauty operators to cut hair, and at the same time is restrictive, in that it broadens the authority as far as the cutting of female’s hair is concerned and is restrictive by the withdrawing of any authority to cut the hair of males in connection with waving or permanent waving.

It is a rule of statutory construction, that every statute must be construed with reference to the object intended to be accomplished by it. In order to ascertain this object, it is proper to consider the occasion and the necessity of its enactment and the evil which was intended to be prohibited.

Snyder v. State (1933), 204 Ind. 666-669.

It is a further rule of statutory construction that in ascertaining the legal intent as to a statute, the courts may take into consideration other acts in pari materia, whether passed before or after the Act in question.

Sherfey v. City of Brazil (1937), 213 Ind. 493, 497, 498.

When construed in the above light, it is clear the legislature intended to harmonize the Beauty Culturists Act with the
Barber Act, in connection with any possible conflict in the official duties of each of such licensed activities. This is clearly shown in the Official Opinion found 1937 Indiana O. A. G., Page 116 at 119, where the opinion limits the use of a hair cutter's license issued by the Barber Board to light trimming of the hair of male customers in connection with waving, and to the cutting of males' hair in connection with permanent waving. The last Official Opinion was partly superseded by an Official Opinion of this office, same being 1950 O. A. G. official Opinion 24, which held that when the then existing Beauty and Barber's Acts were construed in pari materia, that beauticians under their beauty license could cut hair in connection with the giving of a permanent wave, and could do light hair trimming incidental to waving of all kinds. The opinion was not specifically directed to or restricted to the question of the cutting of hair of male customers.

From the foregoing, it is clear that under the restrictive provision of the new beauty culturists Act, hair cutting under a beauty license is limited to the cutting of female hair at all times.

Under the above authorities, the Barber law would be subject to the construction which it is entitled to as of the time of its original enactment and therefore now could be applicable only to the cutting of male's hair in connection with a permanent wave and the light trim of male's hair in connection with hair waving.

This sufficiently answers your second question. Your first question is also answered from the foregoing as it necessarily results a hair cutter's license still is required to be issued by your Board to take care of such trimming and cutting of male's hair in beauty shops in connection with waving or permanent waving of such male customers which are not provided for now under the beauty culturists Act. Such hair cutter's license would by law be restricted to such designated activity.