OFFICIAL OPINION NO. 7

March 20, 1947.

Miss Irene R. Prosch, Secretary,
State Board of Beauty Culturist Examiners,
328 State House,
Indianapolis, Indiana.

Dear Miss Prosch:

I have your letter of February 11, 1947 in which you request an opinion on the following question:

> "Is it permissible for a Beauty Culturist School, operating under the name the School was issued a license, also to conduct advanced courses under another name in the same establishment."

The fact situation involved is not completely covered by your request. It might range from the situation where a person licensed to operate a beauty culture school would actually maintain two different schools in the same establishment to the situation where the school operated in divisions. However, from the advertising material submitted with your request, I gather that the situation you have in mind is one where certain specialized courses are given by a beauty college are designated by a particular name such as, for example, Advanced Cosmetic Institute, A Division of the —— Beauty School.

In determining whether the maintenance of the use of such a name in connection with a specialized division or post graduate work of a beauty school is a violation of law, we should first look to the licensing provisions of the Indiana Beauty Culture law. In the first place, the maintenance of a beauty school is in and of itself a legitimate business. The licensing provisions are imposed as an exercise of the police power.

As stated in The Midwestern Petroleum v. State Board of Tax Commissioners (1934), 206 Ind. 688 at 700:

> "* * * It is within the legislative power to regulate, license or discourage business enterprises,

> legitimate in themselves, but tending to affect the welfare of the state or the business as a whole, * * *"

However, since the police regulations are in derogation of common law rights, they should be applied no more restrictively than required to effect the purpose of the police regulation. The purpose of the beauty culture law is set forth in (Section 29, Chapter 72, Page 200, Acts of 1935, 63-1828 Burns' 1933 R. S.):

> "The purposes of this act shall be to prevent the spreading of diseases and promote the general health of the public by promoting sanitary conditions in beauty culture shops and beauty culture schools and in the practices of beauty culture."

The Act itself contains very few provisions applicable to beauty culture schools. In Section 1 (63-1801 Burns' 1933) it is made unlawful for any "person, firm or corporation" to manage, operate or control a school without a certificate of registration. Also, in the same section, it is required that the school be under the personal supervision of a registered beauty culturist.

Section 3 (63-1803 Burns' 1933 R. S.) requires that a course of one thousand hours of not more than eight hours a day be given as a prerequisite to graduation; that there be one instructor for each twenty students and curriculum requirements are set forth.

In Section 23 (63-1823 Burns' 1933 R. S.) the board is given authority to make rules and regulations for the administration of the Act.

There is nothing in the Act or in the rules and regulations which were duly promulgated thereunder under date of December 10, 1945 which would regulate directly the use of a name. In fact, the statute itself seems to indicate that the certificate is issued not in the name of a school, but to a person, firm or corporation which operates a school. Under those circumstances, it does not seem to me that we are justified in applying restrictions as to the use of a name for a school which do not clearly appear in the Act or rules and

regulations. Consequently, I am of the opinion that there is nothing unlawful per se in the use of divisions or institutes in connection with a beauty college.

However, it is well to bear in mind that a beauty college whether offering special courses or not must comply with the rules and regulations of the board and in that connection I wish to point out Rule Number 13 which prevents the enrollment of a student in a school for less than thirty hours or more than 48 hours a week for training; Rule Number 21 which requires that if students enrolled for more than one thousand hours of training, such intent must be specified on the enrollment card at the time of enrollment, and Rule Number 27 which requires instructors employed by beauty schools to be licensed beauticians in good standing for at least five years and graduates of approved schools of beauty culture.

OFFICIAL OPINION NO. 8

March 25, 1947.

Hon. Ben H. Watt,
Superintendent of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Mr. Watt:

I have your letter of March 18, 1947 in which you request an official opinion upon the following question:

> "In Chapter 328 of the Acts of 1947 there appears an apparent omission in section 1, schedule 4, so as to make it difficult to harmonize the wording of the schedule with the specific figures in the table which follows. I should like your official opinion on the following question:
>
> "Are the figures in the salary schedule table to be considered controlling in the computation of the minimum salaries of teachers?"