Mrs. Edith L. Schnitzzius, Executive Secretary  
Indiana Beauty Culturist Board  
1023 Indiana State Office Building  
Indianapolis 4, Indiana

Dear Mrs. Schnitzzius:

This is in reply to your letter requesting an Official Opinion on the following questions pertaining to the licensing of beauty culture shops in the State of Indiana:

"1. Is it possible for a license to be issued in the name of a person other than the recently licensed Beauty Culturist. This person might be a husband, father or any other relative?

"2. If a recently licensed beautician does operate the shop what is the penalty—if any?

"3. Clarify the statement waiving six months service due to hardship.

"4. Must a shop license be issued under the name of a licensed Beautician?"

The Indiana Beauty Culture Law is the Acts of 1935, Ch. 72, as amended and added to, and as found in Burns' (1961 Repl.), Sections 63-1801 through 63-1828. Burns' 63-1801, supra, makes certain practices unlawful, one of which is:

"(2) For any person, firm or corporation to own and/or operate a beauty culture school or beauty culture shop, unless it is at all times operated under the personal supervision and management of a registered beauty culturist.” (Our emphasis)

Prior to addition of Burns' 63-1812a, supra, to the Beauty Culture Law by the Acts of 1955, Ch. 262, Sec. 14, it was not required that a beauty culture shop be licensed although there were provisions for registering beauticians. Since such addition became effective, it has been necessary for every beauty culture shop to be licensed as well as to be operated under the personal supervision and management of a registered beauty culturist.
Burns’ 63-1812a, *supra*, provides the procedure for the issuance of a beauty culture shop license on application of “each person, firm or corporation owning and/or operating a beauty culture shop.” In addition to the procedural aspects of this section the following portion of Burns’ 63-1812a, *supra*, is of importance to this opinion:

“The provisions of this section shall apply separately in regard to each physical premise constituting a separate beauty culture shop. * * * It is the intent of this section that each beauty shop location have a license *in the name of the owner and/or operator.*” (Our emphasis)

Apparently little difficulty was encountered in the licensing of beauty culture shops until the Acts of 1961, Ch. 304, Sec. 2, as found in Burns’ 63-1812c, *supra*, became effective. Such section places restrictions on shop operation by recently registered beauty culturists as follows:

“After January 1, 1962, no beauty culturist shall be issued a license to operate a beauty culture shop, nor shall any beauty culturist be a member of any firm, partnership, or corporation receiving a beauty shop license, unless such beauty culturist shall have served as a registered beauty culturist for a period of six [6] months prior to applying for a license to operate a beauty culture shop, and shall have furnished verified proof to the state board showing such service.

“Provided further; the state board may waive such period of service after the expiration of six [6] months following registration as a licensed beauty culturist and upon the filing of a verified request by any applicant, showing that such service would cause a hardship to such applicant and such applicant is qualified to own and operate a beauty culture shop. Such request shall be accompanied by a supporting verified statement signed by two [2] persons to whom the applicant is personally known.”

In construing together Burns’ 63-1801, 63-1812a and 63-1812c, *supra*, it is apparent that, with the exception of certain
beauty culturists, any person, firm or corporation may own a beauty culture shop as an investment, which shop must, by law, be both licensed as a shop and operated by a person licensed as a beauty culturist more than six months. Such shop license is referred to in Burns 63-1812c, supra, as "a license to operate a beauty culture shop," which raises the question whether the 1961 Legislature intended issuance of beauty culture shop licenses to be to none other than a registered beauty culturist qualified as set out in Burns' 63-1812c, supra; however, this is not expressly stated in Burns' 63-1812c, supra, and Burns' 63-1812a, supra, providing for issuance of a beauty culture shop license on application of "each owner and/or operator" continues in effect.

The use of "and/or" in any statute frequently raises a question of ambiguity and courts have generally held that the words are interchangeable and that one may be substituted for the other, if to do so is consistent with legislative intent.

Sutherland Statutory Construction, 3rd Ed., Vol. 2, Sec. 4923, p. 451;

26 I. L. E. Statutes § 120.

Certainly the legislative intent expressed in Burns' 63-1812c, supra, is that the operator of a beauty culture shop should be issued a shop license. That is not only the latest enactment but also more special legislation than Burns' 63-1812a, supra. Well-settled rules of statutory construction would therefore require Burns' 63-1812c, supra, to prevail insofar as its provisions conflict with those of Burns' 63-1812a, supra; nevertheless, if it is possible to harmonize such conflict to permit a reasonable construction avoiding an unjust or undesirable result, such interpretation should be adopted.

State ex rel. Clark v. Stout (1933), 206 Ind. 58, 187 N. E. 267.

There would seem to be a certain harmony resulting from a construction of these sections to require both the owner and the operator to secure a license for the operation of a beauty culture shop as doing so would facilitate enforcement of Burns' 63-1801, supra, thereby providing a record of the owner and of the responsible operator. Under such interpre-
tation, there would be two names on every shop license issued unless the qualified operator applying for the shop license should also be the owner of the shop.

Therefore, in answer to your related first and fourth questions, it is my opinion that a person related to a recently licensed beautician may be issued a license as owner of a beauty culture shop provided that such person is himself a beauty culturist qualified to operate a shop under Burns' 63-1812c, supra, or if not, that a registered beauty culturist, who is in fact so qualified joins such person in the application for such license as the operator responsible for the management and supervision of the beauty culture shop.

Burns' 63-1812c, supra, expressly prohibits issuance of a license to operate a beauty culture shop to a beauty culturist less than six months after registration; therefore, until such beauty culturist meets the requirements of Burns' 63-1812c, supra, it would be unlawful under Burns' 63-1801, supra, for a beauty culture shop to be operated under the personal supervision and management of such person, for a license is but "[a] permission, accorded by a competent authority, conferring the right to do some act which without such authorization would be illegal * * *"


Conviction of violating any provision of Burns' 63-1801, supra, is punishable under Burns' 63-1816, supra, by:

"* * * a fine of not less than twenty-five dollars [$25.00] and not more than two hundred dollars [$200.00], to which may be added imprisonment not to exceed thirty [30] days:"

Burns' 63-1812a, supra, provides similar penalties upon conviction of "owning and/or operating" a beauty culture shop without having a currently effective and paid-up shop license. In addition to the aforesaid penalties, it should be noted that, upon written request from the board, the Attorney General is authorized by Burns' 63-1824, supra, to seek injunctive relief against any person violating any of the provisions of the Indiana Beauty Culture Law. It has not been the practice of the Attorney General to state affirmatively that the
doing of certain acts would be a violation of any law as this is a conclusion that would invade the province of the courts after presentation of all the facts.

Therefore, in answer to your second question, it is my opinion that any recently licensed beautician who should unlawfully operate a beauty culture shop might be subjected to fine and imprisonment upon conviction. In addition, such person could also be subjected to a civil action in the nature of a mandatory injunction in the event that such violation did in fact exist. Furthermore, it is also my opinion that there is a possibility that the owner of a shop so operated might also be subjected to the aforesaid penalties as well as possible revocation of the shop license.

Your letter of request asks for clarification of the provision waiving six months service due to hardship, set out in Burns' 63-1812c, supra. The pertinent part of such provision is as follows:

"* * * the state board may waive such period of service after the expiration of six [6] months following registration * * *" (Our emphasis)

Because the waiver can be granted only after expiration of six months following registration, the same period of time in which service would otherwise be rendered, it is apparent that the waiver is not of a period of time but rather of the service requirement only. Other provisions relating to such power to waive seem to need no clarification.

In summary and conclusion, it is my opinion that a license for a beauty culture shop must be issued in the name of the owner and the name of the operator, which operator must be a registered beauty culturist who has served for a period of six [6] months prior to applying for the license or who has, six months following registration as a beauty culturist, had the period of service waived by the state. Upon conviction of operating a beauty culture shop by one not so qualified, penalties of a fine and imprisonment may be imposed.