

Opinion No. 37-1807

October 29, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mrs. Bertha Bailey, Secretary State Board of Cosmetology Albuquerque, New Mexico

{*175} This is to acknowledge receipt of your letter of October 28, 1937, with enclosures.

You have submitted a form of price agreement entered into between the various beauty parlor operators of Judicial District No. 6. You state that \$ 3.00 is the minimum price set in such an agreement, but that one shop owner is advertising permanents at \$ 3.00, the minimum price, and gives one free permanent with each \$ 3.00 wave. You wish to know if such advertising is a violation of the law.

I might state at the outset that I do not believe that the correspondence submitted by you shows that sufficient action has been taken to fix minimum prices of any kind in Judicial District No. 6. Chapter 229, Laws of 1937, gives the State Board of Cosmetology power to approve minimum price agreements by order. It is the order of the State Board, rather than the agreement of the beauty parlor operators, which determines the minimum prices. Your correspondence does not indicate that the Board has made such an order approving the price agreement. Even if such an order has been made, I entertain serious doubts as to the sufficiency of the agreement as it merely states that prices appearing on the cards in various shops are adopted as minimum prices. In view of serious doubt as to the constitutionality of the law, I believe it would be far safer for the minimum prices to be itemized in the agreement.

In view of the above, I do not feel that it is necessary at this time to pass upon the question of whether or not a particular shop owner is violating the law by advertising that one permanent will be given free for each permanent paid for. However, I will state this, that your position could be strengthened by providing in the shop owners' agreement and order of the Cosmetology Board that the minimum prices established should be the minimum rates without rebates of any form or character.

We have not prepared any form of price agreement or approving order for the Board of Cosmetology. I seriously doubt the propriety of our doing so. We are merely charged, and it has been our established policy, to give legal advice and representation to state agencies only. It would seem to me that the price agreement is purely and simply a private agreement between the various beauty shop owners, and that private counsel should be consulted by the various beauty shop owners relative to preparation of the same. We will, of course, be glad to give the Board advice upon the validity of the order and agreement after they have been prepared and submitted to us.

We are returning your enclosures herewith.

By: RICHARD E. MANSON,

Asst. Atty. Gen.