

## Opinion No. 37-1835

December 7, 1937

**BY:** FRANK H. PATTON, Attorney General,

**TO:** Mrs. Bertha Bailey, Secretary State Board of Cosmetology P. O. Box 855  
Albuquerque, New Mexico

{\*201} This will acknowledge receipt of your letter dated December 6, wherein you make inquiry whether morticians and embalmers must be licensed under Chapter 221, Laws of 1937, regulating cosmetology, before they can render beauty service in mortuaries.

I presume you mean to limit the term "beauty service" as used in your letter only in so far as it relates to the dressing of hair, etc., of deceased persons preparatory to burial.

Common sense would seem to dictate that Chapter 221, Laws of 1937, was intended to regulate and require the licensing of hairdressers, beauty culturists, etc., only in so far as such hairdressing or beauty culture work was practiced upon living human beings. The reason for this is obvious. The only basis upon which the provisions of Chapter 221 may be upheld would be upon the ground that the same is proper police power legislation founded on the principle that its provisions actually promote public health. There are many reasons for upholding the act in so far as it attempts to regulate and license the practice of hairdressing, beauty culture, etc. upon living persons because public health is surely promoted by the regulation of public establishments such as cosmetological establishments where cleanliness and sanitation are of the utmost importance and the operator comes in such close contact with a multitude of the living public.

However, it strikes me that the promotion of public health in the practice of such occupations ceases when there is involved the dressing of hair, beautifying the face and manicuring the nails of deceased persons. To say the least, public health would relate only in a very remote degree to such cases, and I am of the opinion that an interpretation or application of Chapter 221, so as to require the licensing of embalmers thereunder before they may dress hair, beautify faces or manicure nails of deceased persons, would render any such interpretation or application unconstitutional.

I conclude, therefore, that, in my opinion, the provisions of Chapter 221, Laws of 1937, regulating cosmetology, do not apply to embalmers {\*202} who are authorized under Chapter 101, Laws of 1937, to prepare the human dead for transportation or burial.

By: FRED J. FEDERICI,

Asst. Atty. Gen.