

OPINION
77-65

February 24, 1977 (OPINION)

Ms. Adeline Vondrachek
North Dakota State Board of
Hairdressers and Cosmetologists
Box 1544 - 106 North Third
Suite M 101 Dakota Hotel
Grand Forks, ND 58201

Dear Ms. Vondrachek:

This is in response to your letter of January 15, 1977, wherein you request an opinion of this office concerning Chapter 43-11 of the North Dakota Century Code as it relates to persons engaged in electronic hair removal, electronic skin care, and application of sculptured or artificial fingernails.

You submit that persons and establishments not licensed by the North Dakota Board of Hairdressers and Cosmetologists are engaged in the electronic removal of hair, electronic skin care, and application of sculptured or artificial fingernails. You further provided photocopies of advertising materials covering such items.

You ask for an opinion regarding whether or not such practices fall within the activities referred to in Chapter 43-11 of the North Dakota Century Code and are regulated thereby. You further ask for an opinion as to whether or not such activities must be performed only by licensed persons in licensed establishments.

We note the provisions of Section 43-11-01 of the North Dakota Century Code, which in part defines the term "cosmetology", as follow:

"DEFINITIONS. In this Chapter, unless the context or subject matter thereof otherwise requires:

1. "Cosmetology" as used in this chapter is hereby defined and construed to mean any one or combination of practices generally and usually heretofore and hereafter performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding him or herself out as practicing cosmetology by whatever designation and within the meaning of this Chapter and in and upon whatever place or premises; and in particular cosmetology shall be defined and shall include - but otherwise not be limited thereby - the following or any one or a combination of practices to wit: arranging, dressing, curling waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work on

the scalp, face, neck, arms, hands, bust or upper part of the body, or manicuring the nails of any person. . ."

In view of the foregoing definition, it is clear that the activities of electronic hair removal, electronic skin care, and the application of sculptured or artificial fingernails is contemplated by the statute and regulations governing cosmetologists and hairdressers in this state. It would appear and it is our conclusion, that such activities and practices fall within the activities referred to in Chapter 43-11 of the North Dakota Century Code and are regulated thereby. It would appear that one engaged in such activities must have obtained a certificate of registration as required by Section 43-11-13 of the North Dakota Century Code. Section 43-11-13 requires as follows:

"CERTIFICATE OF REGISTRATION REQUIRED. No person in this state shall engage in, follow, or attempt to engage in or follow the occupation of a hairdresser or cosmetologist, nor conduct a hairdressing or cosmetologist establishment or school, unless she first has obtained a certificate of registration."

Accordingly, it would appear that any person engaging or attempting to engage in such activities is required to have a certificate of registration as required by Section 42-11-13, and any person or establishment holding itself out as providing such activities must have a certificate of registration as required in Section 42-11-13 as well as a licensed manager-operator as required by Section 42-11-26 of the North Dakota Century Code unless exempted from the provision of Chapter 43-11 pursuant to Section 42-11-02 thereof.

It should be pointed out that Section 43-11-11 of the North Dakota Century Code provides that the Board with the approval of the State Department of Health shall prescribe such sanitary rules as it may deem necessary to prevent the creating and spreading of infectious and contagious diseases. It would appear that the provisions of Chapter 43-11 are for the regulation of hairdressing and cosmetology taking into consideration of the interest of public health, public safety, and public welfare. Through its police power, the state may regulate an occupation taking into consideration the interests of public health, public safety, and public welfare. *Bob Rosen Water Conditioning Company v. City of Bismarck*, 181 N.W.2d. 722 (N.D. 1970).

We trust the foregoing observations and conclusions will adequately set forth the thinking of this office with regard to the inquiry which you have submitted and that the same will be of interest and of assistance to you.

Sincerely,

ALLEN I. OLSON

Attorney General