

LETTER OPINION
95-L-18

January 30, 1995

Ms. Patricia L. Burke
Burleigh County State's Attorney
514 East Thayer Avenue
Bismarck, ND 58501

Dear Ms. Burke:

Thank you for your January 10, 1995, letter requesting my opinion on whether a business such as Glamour Shots must be licensed pursuant to N.D.C.C. ch. 43-11. Specifically, you question whether such a business is exempt from licensure pursuant to N.D.C.C. ? 43-11-02(6). Based upon the information contained in your letter and attachments, it is my understanding that Glamour Shots arranges hair, provides facial makeovers, and takes photographs. This opinion is based upon the above understanding.

N.D.C.C. ? 43-11-13 provides that no person may engage in the occupation of cosmetology or conduct a cosmetology salon without first obtaining a license. "Cosmetology salon" is defined as "that part of any building wherein the occupation of a cosmetologist is practiced." N.D.C.C. ? 43-11-01(3). "Cosmetology" is defined to include

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.

N.D.C.C. ? 43-11-01(2).

It is clear that individuals providing services at Glamour Shots are practicing cosmetology. The individuals arrange and curl hair and apply cosmetic preparations to the face. Because cosmetology is practiced at Glamour Shots, Glamour Shots is a "cosmetology salon" as defined in section 43-11-01(3). Thus, unless specifically exempted, Glamour Shots must be licensed pursuant to N.D.C.C. ch. 43-11.

N.D.C.C. ? 43-11-02(6) provides that the licensure requirements of chapter 43-11 do not apply to "[s]ervices

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provided by retailers or their sales personnel trained in the demonstration of cosmetics application if the cosmetics are applied only with disposable applicators that are discarded after each customer demonstration."

By its plain language, the above exemption is limited to "retailers" to the extent their sales personnel are trained to demonstrate cosmetics application. The North Dakota State Board of Cosmetology, the agency statutorily responsible for enforcing chapter 43-11, has interpreted this exception to only apply to retailers of cosmetics. The legislative history of House Bill No. 1288 adopting subsection 6 in 1989 is consistent with the interpretation by the Board. "If passed, [this bill] will allow retailers and their trained sales personnel to better serve their customers when demonstrating the application of cosmetics." Hearing on H. 1288 Before the Senate Comm. on Industry, Business, and Labor, 51st N.D. Leg. (March 1, 1989) (Statement of Rep. Rydell). "This bill would allow trained sales personnel in retail establishments to demonstrate the use of cosmetics to consumers." Id. (Statement of Sonna Anderson, Lobbyist for the North Dakota Board of Cosmetology). Because the Board's interpretation is reasonable in light of the subsection's language and history, it must be respected. See Turnbow v. Job Service North Dakota, 479 N.W.2d 827, 828 (N.D. 1992); True v. Heitkamp, 470 N.W.2d 582, 587 (N.D. 1991). In light of the plain language of subsection 6, as well as the Board's reasonable interpretation thereof, the exception does not apply to Glamour Shots. Glamour Shots is not a retailer of cosmetics. Glamour Shots is also not simply demonstrating the application of cosmetics; it is providing the service of beautifying the face and arranging hair.

The exemption in subsection 6 also does not apply to Glamour Shots because the exemption is limited to "cosmetics application." Although not defined in chapter 43-11, "cosmetic" is generally understood to be a preparation designed to beautify the body by direct application. The American Heritage Dictionary, 328 (2d coll. ed. 1991). Thus, "cosmetic application" does not include the arranging or styling of hair. Because these services are provided by Glamour Shots, Glamour Shots is not exempt from licensure under N.D.C.C. ? 43-11-02(6).

In conclusion, it is my opinion that Glamour Shots is a "cosmetology salon" as defined by N.D.C.C. ch. 43-11. It is further my opinion that Glamour Shots does not meet the

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licensure exception provided in N.D.C.C. ? 43-11-02(6), and therefore must be licensed pursuant to N.D.C.C. ch. 43-11 and must comply with the rules and regulations promulgated by the North Dakota Board of Cosmetology.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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