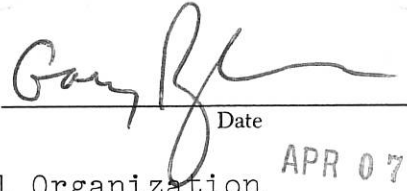


Approved


Date

APR 07 1992

MINUTES OF THE House COMMITTEE ON Governmental Organization

The meeting was called to order by Representative Gary Blumenthal at
Chairperson

9:00 a.m./p.m. on March 30, 1992 in room 522-S of the Capitol.

All members were present except:

Representative Frank Weimer, excused

Committee staff present:

Carolyn Rampey, Legislative Research Department
Julian Efird, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Nita Shively, Committee Secretary

Conferees appearing before the committee:

Rocky Vacek, Administrator of Kansas Board of Barbering

Chairman Blumenthal called the meeting to order when quorum was present.

Action on SB 469 - There was brief discussion regarding the proposed amendment requested by the real estate board at the March 17th Hearing. It was the consensus of the committee that the amendment is unnecessary. Motion by Representative Bowden to report SB 469 favorably and place on consent agenda. Motion seconded by Representative Benlon, motion carried.

Hearing on SB 600 - An act concerning barbering.

Rocky Vacek appeared as a proponent for SB 600. He outlined the 4 proposed changes, recommended by Assistant Attorney General Camille Nohe. They are intended to clarify the statutory authority of the Board; there is no fiscal impact. Mr. Vacek advised that the bill passed the Senate 40-0. (Attachment 1)

Hearing closed on SB 600.

Action on SB 600 - Motion by Representative Bowden to report SB 600 favorably and place on consent calendar. Motion seconded by Representative Hackler, motion carried.

Hearing on SB 749 - An act concerning the Kansas state employees health care commission, relating to the open meetings law.

There were no proponents or opponents present to testify regarding SB 749. Chair requested that staff explain the bill to the committee. Julian Efird pointed out that SB 749, requested by the Health Care Commission, narrowly restricts the open meetings law in order to provide privacy for individuals. Their names and health history cannot become public knowledge.

Chair asked Mr. Efird to contact the Director of the Health Care Commission, requesting that he appear at tomorrow's meeting in order to provide additional input on the bill. Hearing on SB 749 to be continued tomorrow.

Chair briefly discussed the K-GOAL bill (Sub SB 471). He advised that leadership would like to have the lottery included in this bill.

Motion by Representative Bowden to approve minutes for March 23 and 24. Motion seconded by Representative Brown, motion carried.

Meeting adjourned at 9:20 a.m.

THE STATE



OF KANSAS

STATE BOARD OF BARBER EXAMINERS

TERRY STEARMAN
Chairman/Topeka

FRANCIS MADL
Member/Overland Park

ROBERT McCURDY
Member/Russell

717 S. Kansas Avenue
Phone (913) 296-2211
TOPEKA 66603-3811

March 30, 1992

RON NESPOR
~~XXXXXXXXXX~~
Member/Salina ~~Wichita~~

MARK STRANGE
Member/Liberal

H. R. (ROCKY) VACEK
Administrative Officer

REFERENCE: SENATE BILL NO. 600

GOOD MORNING CHAIRMAN BLUMENTHAL AND MEMBERS OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION.

MY NAME IS ROCKY VACEK AND I AM THE ADMINISTRATOR OF THE KANSAS BOARD OF BARBERING.

THE PURPOSE OF MY APPEARANCE BEFORE THIS COMMITTEE IS TO ASK FOR YOUR FAVORABLE CONSIDERATION OF SENATE BILL NO. 600.

IN FEBRUARY, 1991, MS. CAMILLE NOHE, ASSISTANT ATTORNEY GENERAL ASSIGNED TO THIS BOARD, RECOMMENDED THAT CHANGES IN THE STATUTES COVERING THE BARBERING PROFESSION SHOULD BE PROPOSED TO THE LEGISLATURE DURING THE 1992 KANSAS LEGISLATIVE SESSION. IN AN ATTACHMENT TO THIS TESTIMONY, MS. NOHE SPECIFIES THE STATUTES THAT SHOULD BE AMENDED. SENATE BILL NO. 600 ADDRESSES MS. NOHE'S RECOMMENDATIONS.

FOR THE MATTER OF TIME, I AM NOT GOING TO REVIEW EACH CHANGE LINE BY LINE. HOWEVER, I RESPECTIVELY SUBMIT TO THE COMMITTEE A

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FOLLOWING OVERVIEW OF SENATE BILL NO. 600. THE BILL:

1. REVISES EXISTING STATUTES CONCERNING THE REGULATORY AND LICENSING AUTHORITY OF THE BOARD.
2. CLARIFIES THE BOARD'S STATUTORY AUTHORITY TO LICENSE BARBER SHOPS AND BARBER COLLEGES.
3. SPECIFIES THE REQUIREMENT THAT OPERATORS OF BARBER SHOPS RENEW THEIR LICENSES ON AN ANNUAL BASIS.
4. REMOVES ARCHAIC LANGUAGE, i. e., "CERTIFICATE OF REGISTRATION" WITH "LICENSE."

IN CONCLUSION, SENATE BILL NO. 600 ONLY CLARIFIES THE STATUTORY AUTHORITY OF THE BOARD AND HAS NO FISCAL IMPACT ON THE BOARD'S OPERATION.

THANK YOU FOR YOUR TIME AND ATTENTION.

IF THERE ARE ANY QUESTIONS IN REGARD TO SENATE BILL NO. 600, I WILL BE HAPPY TO RESPOND.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296 2215
CONSUMER PROTECTION: 296 3751
TELECOPIER: 296 6296

February 27, 1991

Rocky Vacek
Administrative Officer
Kansas Board of Barber Examiners
717 S. Kansas Ave.
Topeka, Kansas 66603-3811

Dear Rocky:

As I discussed with you and the board members at your last meeting, I have discovered numerous statutory and regulatory changes which should be implemented in order to make your legal scheme coherent. Following our list of the issues which I have identified, I would recommend that the board study these matters and develop a package of proposed legislative changes for the 1992 session. In relation to regulations, I would suggest that the board study the matters I am bringing to its attention as well as thoroughly review all of your regulations. I have not gone over all of the regulations carefully, but I suspect there are others which should be amended.

Statutes

1. K.S.A. 1990 Supp. 65-1819(a) provides: "Every licensed barber, every licensed instructor, and every licensed operator of a barber school or barber college shall annually renew the license and pay the required fee." This statute does not require operators of a barber shop to renew their license annually.

2. K.S.A. 1990 Supp. 65-1820 addresses the suspension of a certificate of registration. The board no longer issues certificates of registration and therefore this statute should be repealed. (K.S.A. 1990 Supp. 65-1820a provides the appropriate procedure for suspending or revoking a license.)

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3. K.S.A. 1990 Supp. 65-1820a provides the statutory authority to refuse to issue, renew, suspend, or revoke any license. Within that section, subsection (10) allows the board to take administrative action for "the violation of any of the sanitary regulations promulgated by the board for the regulation of barber shops; barber schools and barber colleges." However, that statute does not provide authority to take administrative action if a barber school has violated any of the provisions found in K.A.R. 61-3-1 et seq., the regulations pertaining specifically to schools. K.S.A. 1990 Supp. 65-1825 gives the board authority to adopt the school regulations, but there is no statutory authority to take action against a licensee for violation of those regulations. Although K.A.R. 61-3-23 purports to establish authority to take administrative action for violation of those rules, that regulation is not authorized by any statutory authority (i.e. K.S.A. 1990 Supp. 65-1820(a) and therefore is not an enforceable regulation.)

4. K.S.A. 1990 Supp. 65-1820a(a), K.S.A. 1990 Supp. 65-1821, and K.S.A. 65-1829 all contain the same requirement that administrative proceedings must be conducted in accordance with the Kansas Administrative Procedure Act. This does not need to appear in three separate statutes. It is sufficient for that authority to appear in K.S.A. 1990 Supp. 65-1820a(a). The other two statutes should be repealed.

5. K.S.A. 1990 Supp. 65-1823 contains definitions that are duplicitous with the definitions found in K.S.A. 1990 Supp. 65-1809. Therefore, K.S.A. 1990 Supp. 65-1823 should be repealed.

6. K.S.A. 1990 Supp. 65-1825(b) refers to "each person to whom a certificate of registration is granted." Since the board no longer issues certificates of registration, that phrase should be changed to "license."

7. K.S.A. 1990 Supp. 65-1825a is identical with the first paragraph of K.S.A. 1990 Supp. 65-1825. It should therefore be repealed.

8. K.S.A. 1990 Supp. 65-1826 provides: "The practice and procedure of the board with respect to any investigation made by it under authority of this act shall be accordance with rules and regulations promulgated by the board. Such rules and regulations shall provide for proper notice and hearing in accordance with provisions of the Kansas Administrative Procedure Act." The Kansas Administrative Procedure Act

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addresses the proper legal procedure for administrative hearings. It does not pertain to administrative investigations. Therefore, the second second sentence of that statute is meaningless and should be repealed.

9. K.S.A. 65-1820a(b)(8) uses the phrase "certificate of registration." That phrase should be amended to "license."

10. K.S.A. 1990 Supp. 65-1818 provides: "Every holder of a license shall display it in a conspicuous place next to or near the holder's work chair." I assume the license this statute speaks of is a barber's license, and not a school or salon license. That statute should be amended to make it clear that it pertains only to a barber's license.

11. As I mentioned, I could not find any clear statutory authority for the board to license barber shops. While that authority might be implied from the total statutory scheme, it would be preferable to have clear statutory authority granted to the board to license barber shops.

Regulations

1. K.S.A. 65-1820a(b)(2) gives the board authority to take administrative action "when applicant or licensed barber is or becomes afflicted with an infectious or communicable disease." K.A.R. 61-3-10 requires that a student "furnish a certificate from a Kansas licensed physician, showing that he or she is free from any contagious, infectious or communicable disease." K.A.R. 61-1-19 provides: "No person suffering from communicable or infectious diseases, which are dangerous to the public health, shall knowingly be served in a barber shop, school or college, or restroom in connection therewith." K.A.R. 61-1-20 provides: "Any member of the board or proper health officer shall have authority to require any barber to submit to a physical examination when in the judgment of this officer, the board may be affected with a contagious or infectious disease." Under the authority of K.S.A. 1990 Supp. 65-1825 the board may adopt rules and regulations as necessary to carry out the provisions of the barber's act. I would suggest that the board adopt by regulation a list of the specific infectious, communicable, or contagious diseases that will fall within the statutory and regulatory authority.

2. K.S.A. 1990 Supp. 65-1826 provides: "The practice and procedure of the board with respect to any investigation made by it under authority of this act shall be in accordance with rules and regulations promulgated by the board." Therefore,

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rules and regulations should be adopted which set forth the investigatory procedure the board will utilize when doing its investigations.

3. K.S.A. 1990 Supp. 65-1817, as amended by the 1990 legislature, authorizes the board to adopt fees with a higher ceiling. In order to do this the board must promulgate by regulation a new fee schedule.

4. K.A.R. 61-3-2 requires a student to complete 1,500 hours of schooling within nine months. This regulation is in conflict with K.S.A. 1990 Supp. 65-1810(a)(1) which requires a student to complete 1,500 hours of school within 18 months. K.A.R. 61-3-2 is therefore void and without force or effect and should be amended to comply with the statute, or repealed.

5. K.A.R. 61-4-2 is entitled "Renewal of Licenses and Certificates of Registration." The phrase "certificates of registration" should be deleted.

6. K.A.R. 61-7-1 regarding fees includes several references to "certificate" and this should be changed to "license."

7. K.A.R. 61-4-2 refers to licenses of a "chair lessee." There is no statutory authority to license a category of chair lessee. The statutory authority to license extends to barbers, barber schools and at least arguably barber shops.

8. K.A.R. 61-3-4 has several references to the word "permit." That word should be changed to "license."

9. K.A.R. 61-3-5 refers to a "registered barber." This should be amended to a "licensed barber."

10. K.A.R. 61-3-22 refers to a "permit." This should be changed to "license."

11. K.A.R. 61-3-23 refers to a "permit." This should be changed to "license." However this regulation insofar as it authorizes or purports to authorize the revocation of a permit or licence for failure to comply with regulations applicable to schools is not valid as mentioned earlier.

12. K.A.R. 61-3-25 refers to "registered apprentice barbers." The word "registered" should be changed to "licensed." In addition, that regulation refers to K.S.A. 65-1811 and to K.S.A. 1977 Supp. 74-1806, both of which have been repealed.

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Therefore, that regulation should be written referring to appropriate current statutes.

I will be glad to be of assistance to you and the board regarding any changes in the statutory language or regulations. As I mentioned, there may well be other changes needed which come to the board's attention once a thorough review of the statutes and regulations has been completed.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN



Camille Nohe
Assistant Attorney General

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