

# MAINE STATE LEGISLATURE

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*Barbers + Cosmetologists Practicing in Same Shop*

STATE OF MAINE

32 M.R.S.A. 305  
32 M.R.S.A. 1556

*DM*

Inter-Departmental Memorandum Date November 18, 1977

To H. George Poulin, Executive Sec. Dept. Board of Barbers  
From Kate C. Flora, Assistant Dept. Attorney General  
Subject Barbers and Cosmetologists Practicing in the Same Shop

QUESTION:

You have asked for an opinion as to whether a barber shop may employ a cosmetologist in the shop if the shop is licensed as both a barber shop and a beauty shop.

SUMMARY OF CONCLUSION:

Under the laws relating to the practice of barbering and cosmetology, as amended effective October 24, 1977, there appears to be no prohibition to such joint practice; however, Rule 17 of the Rules and Regulations Relating to the Operation and Sanitation of Barber Shops forbids the operation of "other businesses" in a barber shop unless separated by a full length partition.

DISCUSSION:

The answer to your question must begin with an examination of the language of Title 32 M.R.S.A. §§ 305 and 1556, which deal with practicing in same shops, and the Statement of Fact accompanying L.D. 1838, which enacted these sections as part of Chapter 398 of the Laws of 1977. Section 305 states:

"In any licensed barber shop in which all the licensed barbers are also licensed as cosmetologists pursuant to chapter 23, both practices may be carried on in that shop. Partitions between or separate rooms for the two practices shall not be required in any such shop."

Section 1556 states:

"In any licensed beauty shop in which all the registered cosmetologists are also licensed as barbers pursuant to chapter 23, both practices may be carried on in that shop. Partitions between or separate rooms for the two practices shall not be required in any such shop."

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The Statement of Fact with L.D. 1838 provided:

"Under the new draft, a licensed barber may take the examination for cosmetology and be licensed as a cosmetologist and vice versa. In any shop in which all the practitioners hold both licenses, both practices can be carried on. The restriction in the present rules would be eliminated in these cases."

It is a primary rule of statutory construction that legislative intent, where ascertainable, must control. Reggep v. Lunder Shoe Products Co., 241 A.2d 802 (Me., 1968). It is apparent from the two sections quoted above and the Statement of Fact that the Legislature intended to permit both practices to take place in the same shop under one shop license (either a barber shop license, § 304 or a beauty shop license, § 1556) assuming that all the practitioners in the shop have obtained individual licenses as both barbers and cosmetologists. Thus in the instance of the shop with all dual-licensed practitioners, the Legislature has explicitly overruled the restriction in Rule 17 on dual practices.

The statute is much less clear on the question of whether a shop may exist which employs both licensed barbers and licensed cosmetologists who do not all hold dual licenses. The law provides that to practice, every barber (§ 401) and every cosmetologist (§ 1651) must be licensed.

Title 32 M.R.S.A. § 302(2) provides that "the practice of barbering shall be carried on only by persons duly registered to 1/ practice barbering in this State and only in a licensed barber shop . . . ." Section 1552(2) provides that "(T)he practice of cosmetology shall be carried on only by persons duly registered to practice in this State and only in a licensed beauty shop. . . ." The clear meaning of each of these sections is that the practice in question may only be carried on in a shop which is appropriately licensed. However, neither section requires the practice to be carried on in a shop licensed only as a barber shop or beauty shop. Therefore, there appears to be no prohibition on joint practice assuming that the shop has dual licenses, so that licensed cosmetologists are practicing in a licensed beauty shop and licensed barbers are practicing in a licensed barber shop.

However, while nowhere in the statute is there an explicit prohibition on dual practice, the Board of Barbers has a rule

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1/ This is followed by a list of exceptions which are not relevant here.

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prohibiting the carrying on of any other business in a barber shop.<sup>2/</sup>  
This rule, at least as applied to unrelated business such as key-  
making and upholstering, has been determined in an earlier opinion of  
this office to be a valid health measure. (See March 8, 1974, letter  
of Attorney General Jon Lund to Senator Kelley, attached.) Although  
the practices of cosmetology and barbering are similar operations,  
the fact that they require separate educations and separate pro-  
fessional licenses indicates that they are to be regarded as  
different businesses. Therefore, the joint practice of cosmetologists  
and barbers in a dual-licensed shop would appear to be precluded by  
Rule 17.

*Kate Clark Flora*

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Enclosure

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<sup>2/</sup> I understand the cosmetologists once had a similar rule but it  
is no longer in force.