

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Complaint of

**DEPARTMENT OF STATE  
DIVISION OF LICENSING SERVICES,**

Complainant,

**DECISION**

-against-

**RENEE ALICE COFFEY d/b/a MEGACUTS,**

Respondent.

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Pursuant to the designation duly made by the Hon. Gail S. Shaffer, Secretary of State, the above noted matter came on for hearing before the undersigned, Roger Schneier, on April 28, 1993 at the New York State Office Building located at 333 East Washington Street, Syracuse, New York.

The respondent, of 4712 Beef Street, Syracuse, New York 13215, having been advised of her right to be represented by an attorney, appeared pro se.

The complainant was represented by Compliance Officer William Schmitz.

**COMPLAINT**

The complaint in the matter alleges that the respondent operated an unlicensed beauty shop and offered itinerant hairdressing services in violation of Article 27 of the General Business Law (GBL).

**FINDINGS OF FACT**

1) Notice of hearing together with a copy of the complaint was served on the respondent by certified mail on October 26, 1992 (Comp. Ex. 1).

2) The respondent is licensed as a hairdresser and cosmetologist, and has been so licensed since approximately 1987 (Comp. Ex. 3). Since April 29, 1992 she has also been licensed to operate a beauty parlor d/b/a Megacuts at 100 Summerfield Lane, Syracuse, New York 13215 (Comp. Ex. 2).

3) On September 17 1991 the respondent filed a certificate of doing business under an assumed name for the name "Megacuts" (Comp. Ex. 4). She subsequently advertised in various publications that she was available to provide hairdressing services in the homes of persons desiring such services (Comp. Ex. 5), and she did, in fact, go to various locations and provide those services.

### OPINION

The complaint is premised on the belief that GBL Article 27, the statute which provides for the licensing and regulation of hairdressers and cosmetologists, requires that hairdressing and cosmetology services be provided only in licensed beauty parlors. Although there is nothing in the statute that specifically says that, it is the position which was taken by the Attorney General in an opinion some 45 years ago. 1948 Op. Atty. Gen. 217.

The Attorney General's opinion was based on his analysis of several parts of the statute which led him to believe that it was the clear intent of the law that every licensee must be associated with a beauty shop and that, therefore, itinerant hairdressers and cosmetologists were not permitted. First, he cited GBL §407(3), which requires that each license issued pursuant to GBL Article 27 be posted in some conspicuous place in the beauty shop in which the licensee is engaged in the practice of hairdressing and cosmetology, and GBL §409(7) which provides that a license which is not displayed is subject to suspension or revocation. He also referred to GBL §406, which requires that all beauty parlors be maintained and operated in accordance with certain sanitary provisions and which, in the Attorney General's opinion, presupposed the existence of a shop. Also of significance to the Attorney was GBL §414(4), which provides that "home administration, without compensation or other consideration, of any practices defined in this article" are exempt from the requirement of licensure.

The year after the Attorney General rendered his opinion it was addressed in Ciminello v Curran, 198 Misc. 966, 99 NYS2d 581 (Supreme Court, Erie County 1949), aff'd. 277 AD 944, 98 NYS2d 1016, aff'd. 302 NY 818. That was a case which involved a barber who was charged with illegally operating an itinerant barber shop. While the practice of barbering is regulated under GBL Article 28, the Court felt that in light of the similarity of the two statutes, which were enacted at the same time, it was worth considering the Attorney General's opinion that a licensee must be associated with a licensed shop so as to have some place to post his/her license, which posting informs patrons of the shop of the licensed status of the person providing the services and establishes a place where the licensee is available for inspection of his/herself and his/her equipment.

"However, if this petitioner...cannot post his license in a barber shop because he is not engaged in the practice of barbering therein, he is thereby deprived of his only means of livelihood.

On the other hand, if he is compelled to post his license in a barber shop and then carries on his trade by going from firehouse to firehouse in the City of Buffalo cutting firemen's hair, he is being compelled by the state to resort to a subterfuge which thwarts the very purposes intended to be served by the posting of his license at a barber shop. His patrons in the firehouses will never know whether he is a duly licensed barber under the laws of the state of New York due to the fact that his license may be posted in a barber shop far distant from the firehouses that he visits, and he will not be available at the barber shop where his license is posted for inspection by the state of his person and equipment.

"Certainly it should not be said that the law intends or encourages resort to subterfuge as a means of proving apparent compliance with the law." 99 NYS2d at 584.

Clearly, that decision, as affirmed by the Appellate Division and the Court of Appeals, stands for the proposition that a barber, and under similar circumstances a hairdresser and cosmetologist, may lawfully perform barbering/hairdressing services at the home or place of employment of the person to whom the services are provided. The only difference between the barbering and hairdressing statutes is in GBL §414(4), of which there is no equivalent in the barbering statute. That section, as noted supra, provides that the statute does not apply to administration of hairdressing services at a person's home if provided without compensation. The Attorney General opined that the inclusion of that section indicated a legislative intent to forbid home services in all cases where compensation was to be received. I disagree.

The Attorney General's opinion with this regard is infected with the same logical inconsistency as the Court pointed out in Ciminello. The Attorney General felt that there was a clear indication in the language of the statute that the Legislature felt that home administration for compensation could be provided only by persons who were both licensed to practice hairdressing and cosmetology and employed in a shop. However, as the Court pointed out, absolutely no purpose is served by requiring such employment. Rather, it appears that the intent of the Legislature was to require that in cases of home services for consideration the person providing the services be personally licensed as a hairdresser and cosmetologist (as was the respondent), so as to assure that such person is sufficiently qualified, while allowing for non-compensated, unlicensed in home administration of such services, as in the styling by a mother of her daughter's hair or the administration of a home permanent by one friend for another.

**CONCLUSIONS OF LAW**

GBL Article 27 does not make unlawful the practice, in the home of the customer receiving the services, of hairdressing and cosmetology for compensation by a person licensed to engage in such practice and who is not employed in a licensed beauty parlor. Therefore, the charge that the respondent unlawfully operated an unlicensed beauty parlor and offered itinerant hairdressing services should be dismissed.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT**, pursuant to General Business Law §442, all charges herein against Renee Alice Coffey, are dismissed.

These are my findings of fact together with my opinion and conclusions of law. I recommend the approval of this determination.

Roger Schneier  
Administrative Law Judge

Concur and So Ordered on:

GAIL S. SHAFFER  
Secretary of State  
By:

James N. Baldwin  
Executive Deputy Secretary of State