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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. CV-128
	:	
of	:	<u>May 3, 1979</u>
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SUBJECT: ENROLLMENT FEE—The Board of Cosmetology does not have the authority to charge an enrollment fee of students attending a private cosmetology school under contract entered into pursuant to section 8092 of the Education Code.

The Honorable Bill Greene, Senator for the Twenty-Ninth District, has requested an opinion on the following question:

Does the Board of Cosmetology have the authority to charge an enrollment fee of students attending a private cosmetology school under contract entered into pursuant to section 8092 of the Education Code?

CONCLUSION

The Board of Cosmetology does not have the authority to charge an enrollment fee of students attending a private cosmetology school under contract entered into pursuant to section 8092 of the Education Code.

ANALYSIS

Under Business and Professions Code section 7396.8, students enrolling in cosmetology schools are required to pay an enrollment fee to the Board of Cosmetology.¹

This office has previously held that the enrollment fee requirement under that statute did not “apply to students enrolling in courses in cosmetology in the public schools of the state.” (39 Ops. Cal. Atty. Gen. 127, 130 (1962).)

The question presented by the present opinion request is whether this enrollment fee requirement applies to public school students who receive training in a private cosmetology school pursuant to Education Code section 8092 which authorizes public schools to contract with private schools to provide vocational training to the public school’s students. This section provides:

“Any school district or districts; any community college district or districts; any county superintendent or superintendents; or the governing body of any agency maintaining a regional occupational center or program may contract with a private postsecondary school approved pursuant to the provisions of Chapter 3 (commencing with Section 94300) of Part 59 of

¹ Business and Professions Code section 7396.8 provides:

“A student who enrolls in a school of cosmetology or electrology shall within seven days after the date of his enrollment pay to the board the enrollment fee required by this chapter. Upon receipt of such fee and upon receipt of the enrollment certificate filed for such student by the school, the board shall issue to the student a registration card for the course in which he is enrolled and shall at the same time furnish a copy of such card to the school. Except as otherwise provided in this section, the registration card so issued shall entitle the student to complete the course in which he is enrolled without payment of any further enrollment fee. If the student withdraws from the course for which the fee was paid and later enrolls in the same or a different course, whether in the same or a different school, or if he transfers from the course for which the fee was paid to a different course, whether in the same or a different school, he shall pay a new enrollment fee for such course in the same manner as required by this section for the original fee and the board shall issue to him a registration card for the new course. If within 20 days after a student has enrolled in a particular course, the school has not received a copy of a registration card issued to him for such course in accordance with the provisions of this section, it shall require him to discontinue training and shall not permit him to resume training until it has received from the board a copy of a card so issued.

This section shall not apply to a person who is an inmate of a correctional institution while such person is confined herein.”

Division 10 of Title 3 to provide vocational skill training authorized by this code.

“All contracts between a public entity and a private educational institution entered into pursuant to this section shall:

“(1) Be approved by the Department of Education or Chancellor of the California Community Colleges as appropriate pursuant to rules and regulations adopted by the State Board of Education or the board of governors as appropriate:

“(2) Provide that the amount contracted for per student shall not exceed the total direct and indirect costs to provide the same training in the public schools or the tuition the private institution charges its private students, whichever is lower;

“(3) Provide that the public school students receiving training in a private educational institution pursuant to such contract may not be charged additional tuition for any training included in the contract. The attendance of such students pursuant to a contract authorized by this section shall be credited to the public school entity for the purposes of apportionments from the State School Fund;

“(4) Provide that all programs, courses, and classes of instruction shall meet the standards set forth in the California State Plan for Vocational Education.

“The students who attend a private postsecondary school pursuant to a contract under this section shall be enrollees of the public school entity and the attendance of such students at the private school shall be credited to the public school entity for the purposes of apportionments from the State School Fund.

“The State Department of Finance and the Department of Education, or the board of governors, as the case may be, may audit the accounts of both the public entity and the private party involved in such contracts to the extent necessary to assure the integrity of the public funds involved.”²

² In this opinion we do not consider the question of whether Education Code section 8092 is valid in light of article IX, section 8 of the State Constitution which in part provides: “No public money shall ever be appropriated for the support of . . . any school not under the exclusive control

It can thus be seen that the students receiving vocational training at private schools pursuant to this section have been characterized by the statute as “public school students” (Ed. Code § 8092 (3)) and are required to be “enrollees of the public school entity.” (Ed. Code § 8092(4).)

In determining whether the enrollment fee requirement of Business and Professions Code section 7396.8 applies to such students, it is helpful to consider the purpose of that requirement, since the object or purpose of a statute can afford important guidance in the interpretation of its terms. (*People v. Yoshimura* (1976) 62 Cal. App. 3d 410, 415; *Anderson Union High Sch. Dist. v. Schreder* (1976) 56 Cal. App. 3d 453, 460. See also *Freedland v. Greco* (1955) 45 Cal. 2d 462, 467.) In this regard we note that, in addition to the enrollment fee which Business and Professions Code section 7396.8 requires the student to pay to the Board, this section also requires the cosmetology school to submit an enrollment certificate to the Board. The information required by the Board on its enrollment certificate form is indicative of the purpose of this section. The certificate requires the student’s name, address, date of birth, the date his training started, the type of course he is enrolling in and the type of enrollment. The certificate additionally requires for reenrolled students the name of the last cosmetology school attended, the date of attendance and the number of hours completed. Similar information relating to previous training is required for other categories of students. (Student Enrollment Certificate, Form 03E-101 (Rev. 10–78).) Thus the information provided to the Board of Cosmetology in these certificates does not go to the student’s character or his personal fitness to engage in the licensed occupation but is merely the recordation of the data relevant to the student’s educational status.

The Board of Cosmetology informs us that when students wished to resume training in a cosmetology school, it was sometimes difficult or impossible for such students to obtain from their former schools records of their past training because maintenance of records by private cosmetology schools was often inadequate. Thus the filing of the enrollment certificate containing the pertinent information with the Board obviates this problem because it provides an official repository of the student’s training record that would be readily accessible whenever the student needed to verify his prior training. The cosmetology board further informs us that the enrollment fee required by Business and Professions Code section 7396.8 is applied to the cost of maintaining these students’ records. (We note that the enrollment fee is presently \$5.00. Cal. Admin. Code, tit. 16, § 990(c); see also Bus. & Prof. Code § 7446.)

of the officers of the public schools . . .” See *Board of Trustees v. Cory* (1978) 79 Cal. App. 3d 661 and *California Teachers Assn. v. Board of Trustees* (1978) 82 Cal. App. 3d 249.

Thus the purpose of Business and Professions Code section 7396.8, as construed and applied by the Board of Cosmetology is to provide for the reliable maintenance of student record files to ensure that proper credit will be allowed for a student's past training.

As stated in *Killian v. City and County of San Francisco* (1978) 77 Cal. App. 3d 1, 12: "Under well-established principles the contemporaneous administrative construction of a statute or ordinance by the administrative agency charged with its enforcement is entitled to great weight and will be followed unless clearly erroneous." (See also *Rivera v. City of Fresno* (1971) 6 Cal. 3d 132, 140.)

Indeed, this administrative construction of Business and Professions Code section 7396.8 as a statute directed to the purpose of maintaining records of a student's training, as opposed to the purpose of securing information to determine the student's personal fitness and competence to engage in the licensed activity, would appear to be confirmed by comparing that section to Business and Professions Code section 7370 relating to the fee and application for the cosmetology license examination. Business and Professions Code section 7370 expressly requires "proof of the qualifications of the applicant. . . ." (One of the specified qualifications for examination is that one "has not committed any acts or crimes constituting grounds for denial of licensure. . . ." (Bus. & Prof. Code § 7332(b)).) By way of contrast, there is a total absence of any requirement that one prove his qualifications in connection with the student enrollment fee and certificate under Business and Professions Code section 7396.8.

As stated in *Marsh v. Edwards Theatres Circuit, Inc.* (1976) 64 Cal. App. 3d 881, 891: "Where a statute on a particular subject omits a provision, the inclusion of such a provision in another statute concerning a related matter indicates an intent that the provision is not applicable to the statute from which it was omitted."

In view of this student record maintaining function of the statute, there is clear justification for a distinction between public school and private school students. The public schools maintain an extensive and well-established student record-keeping system. (see Ed. Code §§ 49602, 76220; Cal. Admin. Code, tit. 5, §§ 430, et seq., and 59020, et seq.) It has already been noted that students attending a private cosmetology school under Education Code section 8092³ are required to be enrollees of the public school. (Ed. Code § 8092(4).) The public school would thus maintain records of such students, especially since their attendance at the private cosmetology school under Education Code section 8092 is to be credited to the public school for purposes of its receiving state funding. (Ed. Code § 8092 (3), (4); see Ed. Code § 76300 providing that "attendance in all schools and

³ A private school which provides cosmetology training may qualify as the type of "private post secondary school" referred to in Education Code section 8092. (See Ed. Code § 94302(1).)

classes shall be recorded and kept. . . .”) Thus the same public school record-keeping system which justified excluding those receiving their cosmetology training in the public schools from the enrollment fee requirements of Business and Professions Code section 7396.8 would also justify a similar exclusion with respect to public school students attending private cosmetology schools pursuant to Education Code section 8092. Construing the enrollment fee requirements to apply to the public school students receiving their training in private schools pursuant to Education Code section 8092 would require an unnecessary duplication of public records which we believe the Legislature did not intend. We thus conclude that the student enrollment fee requirement of Business and Professions Code section 7396.8 is not applicable to such students.
