

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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John Sylvia
Director

September 13, 2015

The Honorable Craig Blair
Room 217W, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

The Honorable Gary G. Howell
Room 213E, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Dear Chairmen:

The Committee requested the Performance Evaluation and Research Division report on the relationship between the Council for Community and Technical College Education (Council), the Board of Barbers and Cosmetologists (Board), and the schools of barbering and cosmetology, including curricula preparation, implementation, and oversight.

Public Schools of Barbering and Cosmetology Have Been Inadvertently Removed From the Process of Obtaining an Operating Permit.

Passage of Senate Bill (SB) 586 on April 13, 2013 transferred the Board's statutory responsibility of issuing operating permits to public and private barber and cosmetology schools to the Council. In addition, SB 586 transferred the Higher Education Policy Commission's responsibility of approving massage therapy schools to the Council. This legislative intent is expressed in the purpose statement of the introduced bill as follows:

NOTE: The purpose of this bill is to place the authority to license cosmetology, barber, and massage schools with the West Virginia Council for Community and Technical College Education. Current law places authority for approving cosmetology and barber schools with the professional licensing board and authority for approval of massage schools with the West Virginia Higher Education Policy Commission.

The Council's governing law and rule already had authorized it to issue operating permits to occupational and trade schools, but the Council's rule (CSR §135-35-3) exempts private schools if they are under the authority of the Board. However, since private barber schools are no longer under the authority of the Board, they automatically come under the Council's jurisdiction without a need to amend the Council's enabling statute or legislative rule. **However, the Council's rule specifically exempts public schools from being required to obtain a Council-issued operating permit.** Consequently, at the present time, public schools of barbers and cosmetology, and public massage therapy schools are not being approved by any state entity. This creates a technical problem, in that the licensing Boards of barbers and cosmetologists and massage therapy can only issue a license to individuals who have graduated from a barber and cosmetology school or massage therapy school approved by the Council. If an individual graduates from a public school for these professions, the respective licensing board cannot legally issue that person a license.

In Lieu of a Legislative Amendment, the Board of Barbers and Cosmetologists Is Issuing Licenses to Public School Graduates.

The Board of Barbers and Cosmetologists was granting licenses to all individuals who graduated from public and private barber and cosmetology schools because it had assumed that these schools were being approved by the Council. However, the Board only recently became aware that the Council was not approving public barber and cosmetology schools. The Board continues to license individuals who graduated from public schools; however, technically the Board should not be issuing licenses to such graduates. The clear intent of the legislation passed by the Legislature was that the Council would license both public and private barber and cosmetology schools. There are also public schools for massage therapy that are not being approved by the Council. This places the Board of Massage Therapy in the same quandary. **The Legislative Auditor concludes that the Legislature would not have purposely amended Code to make public institution graduates ineligible for licensure in the professions of barbering, cosmetology or massage therapy.** Therefore, the Legislative Auditor recommends that the Council seek an amendment to its current rule to clearly require approval of operating permits for both private and public programs of barbers, cosmetology and massage therapy schools.

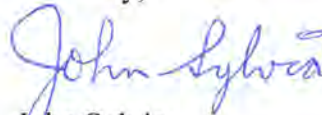
With respect to the Chairs' questions on the relationship between the Board and the Council in terms of curricula preparation, implementation and oversight, the Council can investigate alleged violations against schools with a Council-issued operating permit and has the authority to rescind the issued operating permits. However, the Council cannot investigate, or cease operations of a school that does not have a Council-issued operating permit. The schools provide the Council with a copy of their curriculum as part of the operating permit application. However, the law enables the Board to establish the standards of approval for courses and curriculum. The Board's legislative rule details the minimum licensing and curriculum a licensure applicant has to have completed to be issued a license to practice.

Recommendation

- 1. The Legislative Auditor recommends that the Council for Community and Technical College Education seek to appropriately amend its current legislative rules, CSR §135-35, to include public institutions of barber and cosmetology, and massage therapy in its operating permit approval process, and issue operating licenses to both schools and programs of barber and cosmetology and massage therapy as intended by the Legislature.*

I hope that this addresses your concerns with respect to the Board and the Council. If there are any further questions that you have in this area we are always available to assist you.

Sincerely,



John Sylvia

Enclosure

PERD Evaluation of the Agency's Written Response

Attached to this letter-report is the Council's written response. The Council agrees with the Legislative Auditor that the legislative intent of Senate Bill 586 "*is that the Council would license both public and private barber and cosmetology schools.*" However, the Council states that there are no public "schools" of barber and cosmetology or massage therapy in West Virginia, only "programs" within public institutions, such as Career Technical Education Centers, and Community and Technical Colleges. According to the Council, these programs are not equivalent to a barber and cosmetology school as contemplated in Code of State Rules §3-3. Since the Council is making a distinction between a school and a program within a public school, it does not perceive it has the responsibility to issue licenses to the public schools with programs of barber and cosmetology.

This determination by the Council does not consider that under the licensing structure prior to SB 586 that the definition for school was "*a facility to educate persons to be licensed under the provisions of this article.*" This definition did not make a distinction between whether the facility offers only barber and cosmetology instruction or several career programs. Moreover, prior to SB 586, the Board was issuing operating licenses to Career Technical Education Centers, Community and Technical Colleges, as well as correctional facilities to operate their barber and cosmetology programs within the public institutions. It is illogical to assert that the Legislature did not intend to continue that practice. Clearly, the former definition of schools included stand-alone schools and programs within public institutions. It would appear that the intent of SB 586 was to transfer the authority to license schools and programs from the Board to the Council. **Therefore, the Legislative Auditor maintains the position that the Council issue operating licenses to schools and programs within public institutions for barber and cosmetology, and massage therapy.**

The Council states that it sees no issue with the Board continuing to issue licenses to graduates who have completed program requirements as set by the public schools that currently offer programs in barber and cosmetology, and/or massage therapy. However, the Council does not address how this action contradicts with how the Code is currently written; which states that in order for the Board to issue a license to practice, an individual must graduate from a licensed school that has been approved by the Council. Since the Council has not issued permits to operate to the programs of barbering and cosmetology located within public schools, the continuance of the Board issuing permits to graduates of these programs is in contradiction of the Code.



WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION
Clarence B. Pennington, Chair • Sarah Armstrong Tucker, Interim Chancellor

August 17, 2015

Mr. John Sylvia
Director, Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305



Dear Mr. Sylvia,

This is in response to your request dated July 31, 2015, regarding a draft copy of the report for departmental review on the relationship between the WV Council for Community and Technical College Education (Council) and Board of Barbers and Cosmetologists (Board), and the schools of barbering and cosmetology, including curricula preparation, implementation, and oversight.

The Council reviewed the recommendations of the Legislature outlined in the letter dated July 31, 2015, concerning C.S.R. 135-35, and provides the following clarification to the proposed amendment:

The Council has the authority to license cosmetology and barber schools, and massage therapy schools, under W.Va. Code 18B-2B-6 and Senate Bill 586. This extends to private schools not under the authority of the Board of Barbers and Cosmetology ("Board") (See C.S.R. 135-35.). It is agreed that the intent of Senate Bill 586 is that the Council would license both public and private barber and cosmetology schools. However, there are currently no public institutions in West Virginia of barber and cosmetology, or of massage therapy.

The Board, not the Council, is responsible for establishing the criteria for barber and cosmetology programs, as is the Massage Therapy Board for massage therapy licensure programs.

While there are no public schools of barber and cosmetology, or of massage therapy in West Virginia, which could be considered equivalent to, for example, the Charleston School of Beauty, which is a barber and cosmetology school as contemplated by C.S.R. 3-3, there are public institutions that offer programs in barber and cosmetology, and massage therapy. These public institutions are the Career Technical Education Centers and the public Community and Technical Colleges.


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Career Technical Education Centers are authorized to operate as part of the public K-12 education system, falling under the policies of the Board of Education, with oversight from the Department of Education. Public Community and Technical Colleges are authorized to operate as part of the public higher education system, falling under the rules and policies of the Council for Community and Technical College Education. Both the Career Technical Education Centers and the Community and Technical Colleges, offer a variety of programs which may include programs in barber and cosmetology, and/or massage therapy. These programs adhere to the criteria established by the Cosmetology and Massage Therapy Boards.

Therefore, the Council sees no issue with the Board continuing to issue licenses to graduates who have completed program requirements as set by the public institutions that currently offer programs in barber and cosmetology, and/or massage therapy.

Should you have questions or need additional information, please contact me.

Sincerely,



Dr. Sarah Armstrong Tucker
Interim Chancellor