OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2013-6

Executive Director Sherry G. Lewelling
Oklahoma State Board of Cosmetology
2401 N. W. 23rd Street, Suite 84
Oklahoma City, Oklahoma 73107-2453

April 26, 2013

Dear Director Lewelling:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following question:

> **Is the Oklahoma Board of Cosmetology authorized by the Oklahoma Cosmetology Act to license and regulate cosmetology schools that provide cosmetology instruction to secondary and post-secondary students?**

I.
INTRODUCTION

The Oklahoma Cosmetology Act, 59 O.S. 2011 & Supp.2012, §§ 199.1 through 199.15, governs the practice of cosmetology in Oklahoma. The Cosmetology Act specifically requires that "[e]ach cosmetology school shall be licensed annually by the State Board of Cosmetology." *Id.* § 199.7(A). It is a misdemeanor for any person, firm or corporation in this state to "[o]perate or attempt to operate a cosmetology school . . . without having obtained a license therefor from the State Board of Cosmetology." *Id.* § 199.6(A)(1).

The State Board of Cosmetology, created at Section 199.2, is given a number of powers and duties, including issuing "all certificates of registration, licenses, permits, notices and orders." *Id.* § 199.3(B)(4). The Board is also required to "[m]ake regular inspections of all cosmetology schools . . . licensed to operate in this state[.]" *Id.* § 199.3(B)(6). The Board is charged with adopting a curriculum of required courses in theory and training that is designed to qualify students completing the course to take the exam for an operator's license. *Id.* § 199.7(F).

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II.

THE OKLAHOMA COSMETOLOGY ACT AUTHORIZES THE STATE BOARD OF COSMETOLOGY TO LICENSE AND REGULATE COSMETOLOGY SCHOOLS THAT PROVIDE INSTRUCTION TO SECONDARY AND POST-SECONDARY STUDENTS.

You specifically ask whether the State Board of Cosmetology is authorized to license and regulate cosmetology schools that provide instruction to secondary and post-secondary students. The Cosmetology Act defines the term "cosmetology school" as follows:

> "Cosmetology school" means any place or premises where instruction in any or all the practices of cosmetology is given. Any person, firm, institution or corporation, who holds himself, herself or itself out as a school to teach and train, or any person, firm, institution or corporation who shall teach and train any other person or persons in any of the practices of cosmetology is hereby declared to be engaged in operating a cosmetology school, and shall be subject to the provisions of the Oklahoma Cosmetology Act.

Id. § 199.1(7). By this definition, the Cosmetology Act does not limit the type of entities that may provide instruction but extends the definition of "cosmetology school" to "any person, firm, institutional or corporation" that holds itself out to teach and train or does in fact teach and train persons in the practices of cosmetology. *Id.* Thus, a cosmetology school may be either a private or public institution.[1] In practice, the Cosmetology Board licenses and regulates the instruction of cosmetology in a number of private and public institutions. *See* www.ok.gov/cosmo/Cosmetology_Schools/index.html (listing the public and private schools licensed by the Board of Cosmetology). The administrative rules of the Cosmetology Board explain the application procedures for public and privately owned cosmetology schools and provide for school license renewals for each type of institution. *See* OAC 175:10-3-1.

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[1] The portion of the Cosmetology Act governing the qualifications of the members of the Cosmetology Board requires that one member among its member be "an administrator of a ***licensed private cosmetology school***" and one be "an administrator of a ***public school licensed to teach cosmetology***." 59 O.S.2011, § 199.2(A)(3) (emphasis added).

The Cosmetology Act specifically authorizes cosmetology to be taught in vocational, trade, and industrial cosmetology classes in public schools. *Id* § 199.7(F)(2).[2] The Act also provides for a cosmetology school to be operated in and as part of an accredited high school. *Id.* § 199.7(H).

The Cosmetology Act identifies the students who may receive instruction at cosmetology schools. The Cosmetology Act defines a student as "a person who is enrolled in and attending a cosmetology school for the purpose of learning the practice of cosmetology." 59 O.S.2011, § 199.1(17). Section 199.7(K)(1) provides:

> Students shall:
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> a. have an eighth-grade education or the equivalent thereof,
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> b. be at least sixteen (16) years of age unless they are public or private school students who will be sixteen (16) years of age by November 1 of the year in which cosmetology instruction begins, and
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> c. be of good moral and ethical character.

Id. See also OAC 175:10-3-16 (listing qualifications for students including that the student must be at least 16 years of age by November 1 of the current year).

You ask about the State Board of Cosmetology's authority to license and regulate cosmetology schools that provide instruction to secondary and post-secondary students. In the context of education, secondary is defined as "of or relating to a school intermediate elementary and college." WEBSTER'S THIRD INTERNATIONAL DICTIONARY 2050 (3d. ed. 1993). As the Cosmetology Act specifically authorizes cosmetology schools to be operated in and as part of an accredited high school, and as the Board of Cosmetology licenses and regulates cosmetology schools, we find that the Board of Cosmetology is authorized to license cosmetology schools that provide instruction to secondary students.

Post secondary instruction is that instruction provided after high school. As discussed above, the Cosmetology Board may license private cosmetology schools and vocational, trade and industrial cosmetology classes in public schools. All cosmetology schools are subject to the general requirement that students be at least sixteen (16) years of age "unless they are public or private school students who will be sixteen (16) years of age by November 1 of the year in which

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[2] Public schools in Oklahoma consist of "all free schools supported by public taxation and shall include nurseries, kindergartens, elementary, which may include either K-6 or K-8, secondary schools and technology centers not to exceed two (2) years of junior college work, night schools, adult and other special classes, vocational and technical instruction and such other school classes and instruction as may be supported by public taxation and otherwise authorized by laws which are not in effect or which may hereafter be enacted." 70 O.S.2011, § 1-106.

cosmetology instruction begins . . . ." *Id.* § 199.7(K)(1)(b). No maximum age limit is placed on cosmetology school students. Thus, students in a private or vocational cosmetology school may fall within the category of post-secondary school students. Therefore, cosmetology schools are authorized to provide instruction to post-secondary students.

It is, therefore, the official Opinion of the Attorney General that:

The Oklahoma State Board of Cosmetology is authorized by the Oklahoma Cosmetology Act, 59 O.S.2011 & Supp.2012, §§ 199.1 through 199.15, to license and regulate cosmetology schools that provide cosmetology instruction to secondary and post-secondary students.

E. SCOTT PRUITT
OKLAHOMA ATTORNEY GENERAL

Sandra D. Rinehart

SANDRA D. RINEHART
SENIOR ASSISTANT ATTORNEY GENERAL