

SUNSET AUDIT REPORT

**Board of Barber Examiners
Board of Cosmetology**

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
September 1980**

81-41

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The Kansas Legislature created the Legislative Division of Post Audit in 1971 and charged it with the responsibility of auditing State agencies. The Division is headed by an appointed Legislative Post Auditor, and it reports the results of its work to the Legislative Post Audit Committee, a bipartisan legislative committee.

Through its audit work, the Division provides the Legislature with information for evaluating the work of State agencies. This information helps the Legislature decide what should be done to bring high-quality services to Kansans in the most effective and economical manner.

Legislative Post Audit performs its work in the following ways:

1. By law, the Division reviews the financial affairs and operations of each State agency at least once every two years, including appropriate agency controls, receipts, expenditures, and other records and systems. The Division also reviews other aspects of an agency's operations to determine whether the State's laws, policies, and programs are being carried out effectively, efficiently, and economically.
2. At the direction of the Legislative Post Audit Committee, the Division reviews and assesses particular State programs to determine how effectively and efficiently a program is meeting its goals and whether legislative intent is being fulfilled.
3. Under the Kansas sunset law, the Division evaluates those State agencies the Legislature must decide whether to abolish or retain. The Division's sunset audits are based on criteria set forth in the law, and the Legislature uses the findings to help in its decisions.
4. At the direction of the Legislative Post Audit Committee, the Division conducts audits of special topic areas. Under the Committee's rules, these special audits are reviews of particular problems and are to take no more than 40 hours of staff time.

The Legislative Post Audit Act directs the Division to conduct its audit work "according to accepted auditing standards." As its professional guidelines, the Division uses the publication, *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, issued in 1972 by the Comptroller General of the United States in consultation with state and local finance officials and such related professional organizations as the American Institute of Certified Public Accountants.

Legislative Post Audit presents its findings in four kinds of reports—financial and compliance audit reports, performance audit reports, sunset audit reports, and special audit reports. The reports often contain recommendations that range from relatively small adjustments in agency operations to full-scale revampings of major programs. These recommendations are referred to the Legislative Post Audit Committee for consideration. Through the independence given to the Division by the Committee and by the provisions of law, and through the independent and rigorous nature of its audit and review procedures, Legislative Post Audit strives to produce findings and recommendations that are impartial, objective, and useful to the Legislature and the people of Kansas.

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SUNSET AUDIT REPORT

**BOARD OF BARBER EXAMINERS
BOARD OF COSMETOLOGY**

September 26, 1980

Legislative Division of Post Audit
State of Kansas
Topeka

FOREWORD

This sunset performance audit addresses the question: Is there a need for continued State regulation of the State's nearly 1,250 barbers and more than 17,000 cosmetologists? The report concludes that State regulation is not needed and that the Board of Barber Examiners and the Board of Cosmetology should be abolished. In their review, the auditors found no evidence that significant harm to the public has occurred or would occur without regulation.

It may be argued--and both boards have done so--that without State regulation diseases would be transmitted, that the door would be opened to unqualified practitioners, and that hair or skin could be damaged. Certainly, even with regulation neither industry is problem-free. Inspectors for both boards annually identify a number of shops, supplies, or equipment that do not measure up to sanitation standards. The Board of Cosmetology has also received a number of complaints concerning practicing without a license, unsanitary shop conditions, or poor quality service. But these problems do not necessarily signal that the public's health or safety is in jeopardy or that State regulation is warranted.

According to State and federal public health officials contacted by the auditors, the fear that diseases of any serious nature could be transmitted in a barber or beauty shop setting is not founded in medical fact. Less serious diseases--such as ringworm, head lice, or infectious dermatitis or dandruff--could just as easily be transmitted from a borrowed comb or brush or from a multitude of other unregulated sources. Yet not even these types of diseases were identified as being transmitted in beauty or barber shops.

In addition, an overriding incentive for shop owners to hire only competent, qualified practitioners and to keep clean shops--with regulation or without it--is the profit motive. Beauty and barber shops depend heavily on return business and on word-of-mouth advertising, and dissatisfied customers can mean a substantial loss of trade. Finally, the Food and Drug Administration strictly regulates the chemicals in both store-bought hair care products and those used by barbers and cosmetologists. Thus, any harm that might occur to the hair or skin is not likely to be more serious than any person could bring on themselves by using hair care products purchased at any department or drug store.

Another important concern in evaluating regulatory activity under the Kansas Sunset Law is whether regulation meets the needs of the public, not the needs of the groups being regulated. During their sunset review, the auditors found aspects of regulation by both boards--but particularly by the Board of Cosmetology--that benefit the industry, that artificially restrict entry into the field, that limit competition, or that simply do not serve to protect the public. Some examples:

- The Board of Cosmetology does not allow schools of cosmetology to advertise their prices, even though their prices are significantly lower than the amount charged in commercial shops.
- The Board of Cosmetology allows only five apprentices in Kansas at one time, even though 21 other states with apprenticeship programs have an average of 150 apprentices each.
- Out-of-State cosmetology students automatically lose one-third of the credit hours they have earned when they transfer to a Kansas cosmetology school.
- The Board of Barber Examiners requires a one-year apprenticeship beyond the required one-year of schooling, a requirement that is more stringent than those of both the Board of Cosmetology and a number of other states.
- Inspectors from both boards receive no formal guidelines on how to conduct inspections or identify or act on violations. Nor have they received formal training in public health or sanitation.
- Both boards' requirements for age, education, physical examinations, statements of good moral character, and the like have no bearing on the qualifications necessary to become competent practitioners.

Because there does not appear to be potential for significant harm to the public, while at the same time there do appear to be areas of regulation that benefit the groups being regulated rather than the public, Legislative Post Audit recommends that the Board of Barber Examiners and the Board of Cosmetology be eliminated. The final decision to retain or abolish an agency rests with the Legislature. Because of this, Legislative Post Audit also explored the possibility of retaining the two boards or of consolidating them.

The argument for consolidation is strong. Both boards have obvious similarities in the regulatory functions they perform and in the types of services provided by the practitioners they regulate. The idea of consolidation is not new; 27 states regulate barbers and cosmetologists through an umbrella regulatory agency, a state department of health, or a consolidated board. Thus, Legislative Post Audit takes the position that, if State regulation of barbers and cosmetologists continues, that regulation can be provided more effectively and efficiently through a single, consolidated board. Further, changes should be made to reduce restrictions on entry into the profession and to eliminate practices which benefit the industry.

The audit supervisor for this audit was Donna Mikols, and she was assisted by audit team member James Kaup. Throughout the audit, officials of the Board of Barber Examiners and the Board of Cosmetology have been cooperative and courteous. Their assistance during the audit is appreciated.


RICHARD E. BROWN
Legislative Post Auditor

Summary of Matters for Legislative Attention

Audit Findings and Conclusions

The Kansas Sunset Law abolishes the Board of Barber Examiners and the Board of Cosmetology on July 1, 1981, unless each is continued by an act of the Legislature. The law also requires the Legislative Division of Post Audit to complete a performance audit of these boards nine months before they are scheduled to be abolished.

This audit addresses two main questions with regard to the two boards:

1. Should these boards be re-established?
2. As an alternative to re-establishing them in their present form, should the two boards be revised or consolidated?

The Legislative Division of Post Audit reviewed the activities of both boards, using criteria set forth in the Kansas Sunset Law as the basis for drawing their conclusions. In brief, these criteria call for the Division to assess the need for State regulation, to determine whether the boards serve the general public or the groups they regulate, to determine if the benefits of State regulation outweigh the cost, and to determine whether the occupation could be regulated in a less restrictive manner while still protecting the public.

Board of Barber Examiners

The auditors concluded that State regulation of the barber industry should not be re-established. Their conclusions were based on the following:

Lack of significant harm to the public if barbers, barber shops, and barber schools are not regulated. The auditors found no evidence to suggest that the public would be harmed in any significant way if the practice of barbering were not regulated. Over the past five years, no complaints against the industry have been filed with the Board. Violations are being uncovered during shop inspections--primarily in the areas of unsanitary equipment and supplies--and the Board has taken some disciplinary actions against both barbers and barber shops for occasional or repeated sanitary

violations. An early concern in regulating barbers and barber shops was the fear that infectious or contagious diseases were being spread in barber shop settings. However, the auditors found no demonstrated evidence--either through complaints or after lengthy interviews with State and federal health officials--that this concern is founded in fact, that any harm had occurred because of these violations, or that harm would have occurred had the Board not been in existence to force corrective actions. Finally, two economic factors exist to help prevent a decline in the quality of services provided by barbers if State regulation is discontinued. First, individuals seeking to make a living as barbers will continue to receive training in the field. Second, the industry depends heavily on return business; customers who are dissatisfied with their haircuts or other services or with unclean shops are unlikely to patronize those shops again.

Some aspects of regulation do not serve to protect the public. The auditors found that several aspects of the Board's regulation do not serve to protect the public or may be restricting competition by restricting qualified individuals from entering the trade. These aspects include what appears to be an unnecessarily restrictive one-year apprenticeship requirement beyond the training received in a barber school; unwarranted restrictions on those wanting to enter the field in such areas as age, education, physical examination, U.S. citizenship, and the like that have no bearing on the skills or qualifications barbers need to practice; the lack of training or formal guidelines for Board inspectors; and the lack of public representation on the Board. These and other aspects of the regulatory activity do not have public protection as their primary effect and, as such, appear to be an unreasonable exercise of the State's police power.

The benefits of regulation do not outweigh its cost. The auditors found that the direct cost of State regulation was less than four percent of barbers' total payroll. While this amount does not appear to significantly increase the cost of services to the consumer, any costs being passed on to the public may be unwarranted in view of the insignificant potential for harm without regulation.

Alternative methods of regulation do exist. In the absence of the Board, less restrictive methods of regulation are available. By law, all barber schools would be supervised and approved by the Department of Education, and chemicals used in beauty products would be regulated by the federal government. The need for one-time certification of training at an approved barber school or under a certified practicing barber may exist so that barbers can transfer to other states and obtain malpractice insurance. However, this certification can be provided by the Department of Education; a Board does not appear to be necessary.

Auditors also examined the possibility of retaining the Board but revising or eliminating aspects of regulation that are not in the public's interest or that do not protect the public or ensure competency. In addition,

because the practices of barbering and cosmetology are so similar, and because both the Board of Barber Examiners and the Board of Cosmetology examine and license practitioners, renew licenses, license and inspect shops and schools, handle complaints, and have the authority to discipline practitioners and close shops, the auditors examined the possibility of consolidating the two boards. If the Board of Barber Examiners is not abolished, Legislative Post Audit concluded it should be consolidated with the Board of Cosmetology. If consolidation occurs, changes should be made to revise or eliminate all restrictive or unwarranted aspects of regulation.

Board of Cosmetology

The auditors concluded that State regulation of the cosmetology industry should not be re-established. Their conclusions were based on the following:

Lack of significant harm to the public if cosmetologists, beauty shops, and cosmetology schools are not regulated. The types of complaints being filed and violations being uncovered during Board inspections provide no evidence that significant harm to the public has or could occur. The majority of the complaints and violations scrutinized by the auditors cited problems with unsanitary shops, supplies, or equipment. Such findings do not necessarily indicate that the public's health, safety, or welfare is in jeopardy. On the contrary, no complaint alleged that harm had occurred, and the Board has not taken any disciplinary actions against practitioners, schools, or shops in at least the last five years. Further, public health officials contacted by the auditors said there was little, if any, chance of diseases being transmitted in cases of unclean shops or supplies. Given the nature of beauty shop owners' vested interest in the competency of their operators--which is heightened by their dependence on return business--there is no reason to believe that problems will worsen or increase without State regulation.

Many aspects of regulation do not appear to be designed to protect the public, nor do they have that protection as their primary effect. The auditors found that some aspects of the Board's regulation appear to benefit the industry rather than the public. Others have no relationship to protecting the public or to ensuring that cosmetologists are qualified. The major areas include artificial limits on the number of apprentices allowed in Kansas; unwarranted restrictions on those wanting to enter the field in such areas as age, education, and physical and written examination requirements; automatic denial of one-third of the credit hours earned by out-of-State transfer students; requirements that out-of-State licensed cosmetologists pass a practical examination and take more hours of schooling; and lack of adequate public representation on the Board. These and other aspects of the regulatory activity that do not have protection of the public as their primary effect appear to be an unjustified exercise of the State's police power.

The benefits of regulation do not outweigh its cost. The auditors found that the direct cost of State regulation was less than one percent of the industry's total payroll. Although this amount does not appear to significantly increase the cost of services to the consumer, any costs being passed on to the public may be unwarranted in view of the insignificant potential for harm without regulation.

Alternative methods of regulation do exist. If the Board were eliminated, schools of cosmetology would by law be supervised and approved by the Department of Education and chemicals used in beauty products would be regulated by the federal government. As with barbers, the need for one-time certification of training at an approved cosmetology school may exist so that cosmetologists can transfer to other states and obtain malpractice insurance. However, this certification can be provided by the Department of Education; a Board does not appear to be necessary to perform this function.

The auditors also examined the possibility of retaining the Board but revising or eliminating those aspects of regulation that benefit the industry or that do not protect the public or ensure competency. Finally, because of their obvious similarities--both in the type of functions they perform and in the types of services practitioners provide--the auditors examined the possibility of consolidating the Board of Cosmetology with the Board of Barber Examiners. If State regulation of cosmetologists is continued, Legislative Post Audit concluded it should be consolidated into a single board regulating both cosmetologists and barbers. Should that happen, changes in law or in Board procedures should be made to reduce restrictions on entry into the profession and to eliminate practices which protect the industry rather than the public.

Recommendations and Agency Response

The draft report was sent to the Board of Barber Examiners and the Board of Cosmetology for review. This procedure is followed in the preparation of all audit reports. It offers an opportunity for the agency to point out any errors of fact, to provide information pertaining to the audit's findings, and to indicate its agreement or disagreement with the recommendation. The full text of the responses will be found in Appendix D.

Recommendations: Board of Barber Examiners

1. The Legislature should take no action to re-establish the Board of Barber Examiners and its regulatory function over the practice of barbering.

2. In abolishing the Board, the Legislature may want to consider introducing legislation to do the following:
 - a. establish minimum training requirements that individuals must meet before becoming practicing barbers
 - b. provide for one-time certification by the Department of Education that schooling or apprenticeship requirements have been met
3. Although Legislative Post Audit recommends that the Legislature not re-establish the Board of Barber Examiners, if the Board is re-established, Legislative Post Audit recommends that at a minimum the Board be consolidated with the Board of Cosmetology. A new five-to-seven member Board should be created to regulate the practices of barbering and cosmetology, with up to three members representing the general public interest. In consolidating the two boards, the Legislature should also ensure that the following changes are made in the regulation of barbers:
 - a. Eliminating the apprenticeship requirement for individuals training to become licensed barbers. The option of training either in a licensed barber school or as an apprentice to a licensed barber could be considered, along the same lines as the training options for cosmetologists in Kansas.
 - b. Eliminating current requirements for age, education, physical examinations, statement of good moral character, U.S. citizenship, and the like that do not serve to protect the public, that may artificially restrict entry into the field, or that have no bearing on the qualifications necessary to practice barbering.
 - c. Establishing timetables or schedules for inspections of barber shops to help ensure that each shop is inspected at least twice a year, as called for in the Board's policies.
 - d. Providing formal guidelines and training for Board inspectors.
 - e. Prohibiting members of the newly-created Board from being officers in occupational trade associations or unions.

Agency response. The Administrative Officer of the Board of Barber Examiners responded that the Board had not had time to thoroughly analyze the report but intended to develop a complete and thorough response at a later date. The response did state that the Board was not in accord with the report's conclusions or recommendations and consequently rejected them.

Recommendations: Board of Cosmetology

1. The Legislature should take no action to re-establish the Board of Cosmetology and its regulatory function over the practice of cosmetology.

Agency response. The Board disagreed with this recommendation, saying the Board should be retained "as there is a genuine need for the services they provide."

2. In abolishing the Board, the Legislature may want to consider introducing legislation to do the following:
 - a. establish minimum training requirements that individuals must meet before becoming practicing cosmetologists
 - b. provide for one-time certification by the Department of Education that schooling or apprenticeship requirements have been met

Agency response. The response stated, "A one time certificate would be down grading the profession and would allow problems of all types in regulating the use of chemicals and providing sanitation to the public." It did not elaborate further.

3. Although Legislative Post Audit recommends that the Legislature not re-establish the Board of Cosmetology, if the Board is re-established, Legislative Post Audit recommends that at a minimum the Board be consolidated with the Board of Barber Examiners. A new five-to-seven member Board should be created to regulate the practices of barbering and cosmetology, with up to three members representing the general public interest. In consolidating the two boards, the Legislature should also ensure that the following changes are made in the regulation of cosmetologists:

- a. Amending Board policies regarding apprenticeships to allow more (or an unlimited number) of apprentices to train in Kansas and to allow more than one apprentice in a beauty shop at a time.

Agency response. The Board responded that, rather than allow more apprentices in Kansas at any one time, it preferred to abolish the apprenticeship program altogether. According to the response, "The program allowing shop apprentices was put into effect when students had a long distance to attend school. The increase of cosmetology schools (29 at the present time) has made attendance at a school of cosmetology much more feasible." The response also suggests that shop apprentices generally have a more difficult time in passing the Board-administered examinations required for licensure. The Board went on to say, "The restriction of this type of apprenticeship we felt was a benefit to the public because the student that attended a school obtained a full education in the cosmetology field by qualified instructors."

Legislative Post Audit disagrees that the shop apprenticeship program should be abolished if licensing of cosmetologists continues. Twenty-one other states provide for a shop apprenticeship as an alternative to schooling. The number of apprentices in these states--an average of 150--indicates that many individuals find this a more feasible alternative. Limiting the number of apprenticeships to five or abolishing the apprenticeship program entirely would severely limit the opportunities for people who wish to be trained as cosmetologists and clearly seems to benefit the cosmetology schools in Kansas.

- b. Eliminating current requirements for age, education, physical examinations, statements of good moral character, and the like that do not serve to protect the public, that may restrict entry, or that have no bearing on the qualifications necessary to practice cosmetology.
- c. Revising regulations for out-of-State transfer students to permit them to receive full credit (rather than two-thirds credit) for hours they have completed in approved out-of-State schools of cosmetology.

Agency response. The response stated that some of these requirements are already being revised or deleted from the Board's rules and regulations. However, the Board also indicated its continued support for maintaining the minimum age and education requirement, and for requiring one physical examination at the time an applicant enters school. Legislative

Post Audit contends that such licensure requirements as age and high school education should be eliminated because they do not serve to protect the public, may restrict entry into the field, and have no bearing on a practitioner's competence. Further, public health officials contacted by the auditors stated that any physical examination requirement is unjustified as a requirement for licensing.

- d. Ensuring that the letter informing out-of-State cosmetologists of Kansas' schooling requirements does not require that those hours be obtained in Kansas.

Agency response. The Board's response stated that this requirement has never been Board policy and is in error. However, the form letter to out-of-State applicants provided to the auditors by the Board's Executive Director clearly states, "You will be required to attend a Kansas School of Cosmetology for as long as is necessary to acquire a total of 1,500 hours."

- e. Revising or eliminating the square footage requirement (currently a minimum of 3,500 square feet of floor space) for schools of cosmetology.

Agency response. The response from the Board stated that an area of less than 3,500 square feet would not be conducive to better training and was necessary to accommodate 25 students. Legislative Post Audit would note that Kansas' square footage requirement exceeds both the Cosmetology Accrediting Commission's standards and the requirements in most other states--7 have no requirement and 38 states require less square footage. Thus, Legislative Post Audit maintains that the requirement should be revised or eliminated to ensure that a cosmetology school is not unnecessarily denied a license.

- f. Reviewing the appropriateness of allowing schools to offer only one scholarship per 20 students.
- g. Permitting schools to advertise their prices to the general public.

Agency response. According to the response, the Board is in the process of deleting these restrictions.

- h. Eliminating the State portion of the written examination, which questions cosmetology students over the

amount of license fees, the number of Board members, and similar questions that have no bearing on a cosmetologist's proficiency in the trade.

- i. Eliminating the senior cosmetologist license.

Agency response. According to the response, the Board feels it is necessary to include some questions regarding State law on the written examination. However, Legislative Post Audit would point out that this portion of the examination--which includes questions about the amount of license fees, the number of Board members, and the length of their term--has no bearing on a cosmetologist's proficiency or on the protection of the public.

The Board also expressed its support of the senior cosmetologist license, saying this license was designed to encourage cosmetologists to obtain continuing education. Further, the Board stated that the additional training required for a senior cosmetologist would "reflect in the care they are able to give their patrons." Legislative Post Audit would point out that most continuing education hours being attended to meet the requirements for a senior cosmetologist license are market-oriented courses in hair shaping, styling, and designing put on by cosmetology trade associations and hair care product manufacturers. The license does not allow the cosmetologist to do anything more than a licensed cosmetologist can do. Thus, it appears to be a prestige certificate with no relationship to the protection of the public.

- j. Establishing timetables or schedules for inspections of beauty shops to help ensure that each shop is inspected at least once a year, as called for in the Board's policies.
- k. Providing formal guidelines and training for Board inspectors.

Agency response. The Board said it would establish a stricter inspection schedule for shops and schools. The Board also said it thought its inspectors were well trained and worked effectively, but agreed to request them to attend more seminars.

- l. Prohibiting members of the newly-created Board from being officers in cosmetology occupational associations.

Agency response. The Board responded that Board members need to be trained in the field of cosmetology to give examinations and to handle the Board's affairs. It asserted that Board members have no direct contact with the cosmetology industry and, thus, have no conflict of interest.

Legislative Post Audit would point out that, at a minimum, allowing officers in cosmetology occupational associations to be members of the Board gives the appearance of a conflict of interest. In addition, according to Board minutes for April 19, 1976, and December 28, 1977, the president of the Kansas Cosmetology Association seconded motions at Board meetings. Because she was not a member of the Board at the time, the president's action was a violation of accepted procedures for Board meetings.

Matters Remaining for Legislative Attention

The decision to abolish, re-establish, or consolidate these two boards rests with the Legislature. Under the provisions of the Kansas Sunset Law, both boards will automatically be abolished on July 1, 1981, unless legislative action is taken.

Both the Board of Barber Examiners and the Board of Cosmetology have indicated their strong disagreement with Legislative Post Audit's recommendations that they be abolished. Neither board specifically addressed the issue of consolidation if regulation of barbers and cosmetologists should continue. Based on the auditors' review of the criteria set forth in the Sunset Law, Legislative Post Audit stands by its conclusion that the boards should be abolished or, at a minimum, consolidated and revised accordingly.

Many of the remaining recommendations will require statutory changes or changes in the boards' policies, rules, and regulations. If the Legislature abolishes the two boards, Legislative Post Audit has recommended that it consider introducing legislation to establish minimum training requirements and provide for one-time certification by the Department of Education. If the Legislature retains either boards or consolidates them, Legislative Post Audit has made a number of recommendations for revising or eliminating all restrictive or unwarranted aspects of regulation that restrict entry into the profession, that protect the industry rather than the public, or that have no bearing on the skills needed to practice. The Board of Cosmetology has begun to revise some of these areas, but has objected to other changes. The Board of Barber Examiners has indicated so far that it does not agree with the report's conclusions and recommendations. Some of the recommended changes will require action by the boards; others will require legislative attention and action.

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CHAPTER I

INTRODUCTION

The Kansas Sunset Law abolishes the Board of Barber Examiners and the State Board of Cosmetology on July 1, 1981, unless each is continued by an act of the Legislature. The law requires Legislative Post Audit to complete a performance audit of each agency and submit a report to the Legislative Post Audit Committee nine months before the agency is scheduled for termination. The sunset performance audits for both agencies are presented in this report.

Sunset Audit Methods

The Sunset Law requires that sunset audits address a set of factors set out in the law and any other factors the Legislative Post Audit Committee directs, such as the performance audit factors specified in the Legislative Post Audit Act. These two sets of factors, restated as questions, can be found in the box on the next page.

Based on these factors, Legislative Post Audit developed a set of tests and analyses for use in each sunset performance audit. These tests and analyses include the following:

- Determining the Legislature's intent in creating the program and the functions the agency should perform in accordance with that intent.
- Determining whether a need for the State program or activity exists.
- Determining and comparing the costs of regulation and the value of the regulatory activities.
- Comparing the regulatory activity in Kansas with that of other states.
- Reviewing the frequency of, and reasons for, complaints against those persons or businesses regulated by the agency.
- Determining if the agency effectively protects the public by ensuring that only qualified individuals or businesses are allowed to offer services in the State.
- Determining whether the general public has adequate input to the regulatory process.

SUNSET AUDITING

Legislative Post Audit asks the following questions for each agency or program audited under the Kansas Sunset Law. The first six questions are based on factors set out in the Sunset Law. The remaining three questions are based on the performance audit factors in the Legislative Post Audit Act. Answers to each of these questions may not appear in every sunset audit report, depending on the size and nature of the agency being audited and the relevance of the auditors' findings in each area. More detailed information about the tests and analyses Legislative Post Audit uses in auditing each agency under the Sunset Law can be found in Appendix A.

Is There a Need for State Regulation?

1. Would the absence of regulation by the State agency or office significantly harm or endanger the public health, safety, or welfare?

Does State Regulation Protect the Public?

2. Are all facets of the regulatory process designed solely for the public's protection, and is such protection the primary effect of that regulation?
3. Is there a reasonable relationship between the State agency's exercise of the police power and the protection of the public health, safety, or welfare?

Is Regulation Worth Its Cost?

4. Does the regulation by the State agency or office directly or indirectly increase the cost of goods or services involved and, if so, by how much?
5. Is any increase in cost to the public more harmful than the harm that could result from the absence of regulation by the State agency or office?

Are Alternative Methods of Protection Available?

6. Is there another less restrictive method of regulation available that could adequately protect the public?

Effectiveness of the Regulatory Program

7. Are the responsible agencies carrying out only those activities authorized by the Legislature?
8. Is the program being efficiently and effectively implemented in accordance with the Legislature's intent?
9. Is reorganization needed to accomplish the goals of the program?

Appendix A contains a more complete and detailed list of the tests and analyses Legislative Post Audit used in conducting the sunset performance audits.

In auditing the two boards, the auditors reviewed statutes and administrative regulations pertaining to the boards and to the regulation of barbers and cosmetologists. They then compared Kansas' regulatory programs and requirements with other states' programs and requirements. The auditors also examined records kept by both boards, including inspection reports, complaints, board minutes, and license applications. In addition, they observed practical demonstration examinations given by both boards and an inspection of a barber school conducted by a Board of Barber Examiners inspector. Finally, the auditors contacted public health officials at the State and federal level and surveyed licensed cosmetologists and barbers in Kansas by mail.

Organization of the Report

The sunset performance audits of the Board of Barber Examiners and the Board of Cosmetology are presented separately in the following chapters. Chapter II covers barbers, and Chapter III covers cosmetologists. Each chapter discusses the development of the appropriate board and its primary functions, and covers the sunset analysis of the board's performance.



CHAPTER II

BOARD OF BARBER EXAMINERS

Introduction

The State began regulating the practice of barbering in 1909, when the Board of Health was authorized to inspect barber shops and schools and to adopt necessary rules and regulations regarding public health. According to Board minutes at the time the law was passed, the major concern in regulating barbers was to ensure that shops were clean and that due regard was taken to prevent the spread of disease. Such concern was widespread in the early 1900s before the advent of modern medicine, disinfectants, and higher overall health standards. Board regulations covered such things as sterilization of barber tools and sanitation practices. They also prohibited barbers from serving customers with infectious or contagious diseases or from practicing while infected with such diseases.

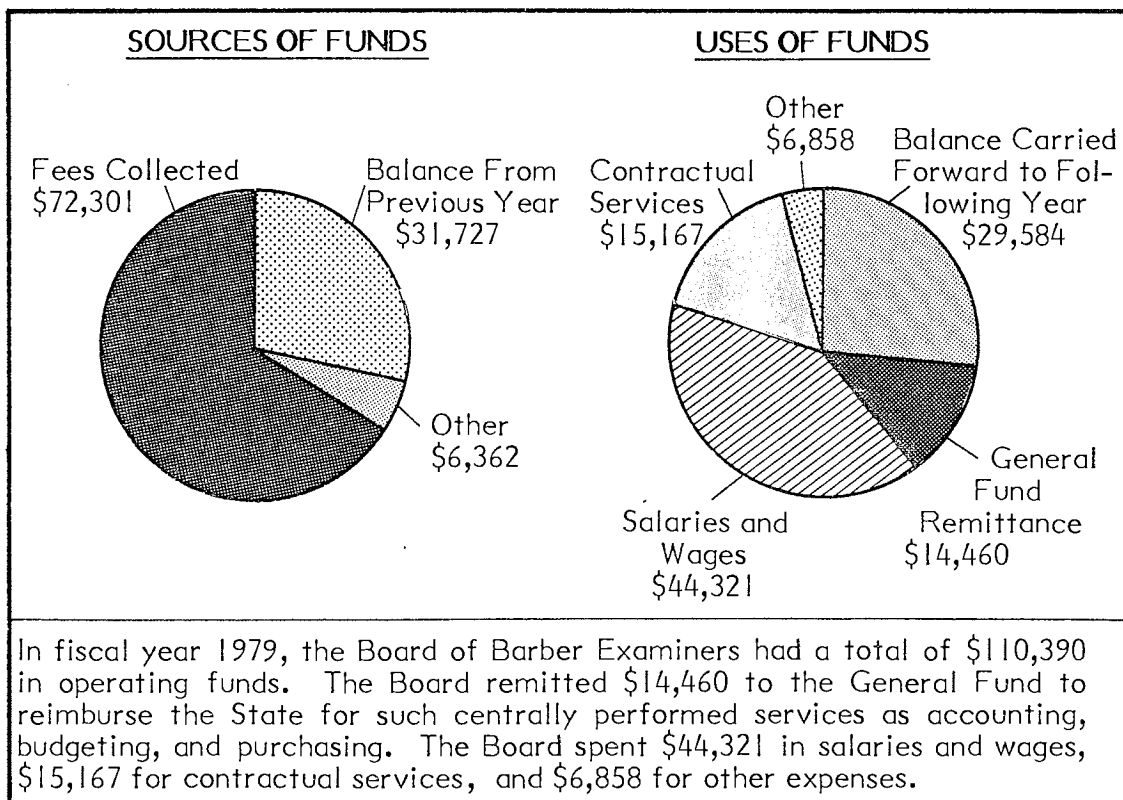
A movement to establish a separate and independent licensing board for the regulation of the barber industry began in 1913. The necessity for creating a new board was questioned by individuals who felt that ensuring sanitary conditions should be the responsibility of the Board of Health; nevertheless, the 1913 Legislature created the Board of Barber Examiners. Under the new Board, all barbers were required to meet minimum age and training requirements and to be licensed before they could practice.

Legislative changes since 1913 have increased both the Board's role in regulating barbers and barber licensing requirements. In 1927, the Board was authorized by law to suspend or revoke licenses or close shops because of incompetency, overcharging, or failure to safeguard against the spread of disease. In 1939, the Board was authorized to regulate the education offered at barber schools in Kansas. And in 1941, the Legislature gave the Board the authority to establish minimum price schedules. (According to the Board, minimum prices were intended to ensure that barbers could afford to "furnish . . . and use modern appliances and equipment so as to minimize danger to public health and safety." Questions as to the constitutionality of minimum price schedules arose as early as 1961; these schedules were repealed in 1978.) Under current statutory licensing requirements, individuals who want to become licensed barbers must now complete 1,500 hours of training in a barber school, must serve a 12-month apprenticeship under a licensed barber, and must pass two written and practical demonstration examinations administered by the Board. In fiscal year 1979, 54 persons took the practical and written apprenticeship exam-

inations and 56 took both barber license examinations; 9 out of 10 persons who took these examinations passed them.

The Board of Barber Examiners has five major functions in regulating the practice of barbering. These functions can be summarized as follows:

- administering written and practical demonstration examinations to barber students and apprentices. These examinations test individuals' knowledge of "hygiene and the fundamentals of the vocation" and knowledge of their proficiency in such procedures as cutting, dyeing, and waving hair
- licensing all barbers, barber schools, and barber shops in Kansas, both initially and annually
- inspecting all new and established barber schools and shops for compliance with sanitation and safety requirements regarding supplies, equipment, and general cleanliness, and for compliance with administrative regulations regarding such things as displaying licenses
- handling complaints from consumers and from individuals within the industry



-- enforcing laws and regulations and bringing about any needed changes as a result of inspections or complaints

The Board comprises three members who are appointed by the Governor for staggered three-year terms. All three members must be practicing barbers and must have at least five years of experience. The Governor designates one Board member as the Executive Director to supervise the daily operations of the office and the activities of both a full-time and part-time inspector and one secretary.

In fiscal year 1979, there were 2,039 licensed practitioners in Kansas, including barber apprentices, barbers, and school instructors. This is down from 2,372 licensed practitioners in 1975, primarily because the demand for barbers has decreased. One reason for this decline is that, increasingly, men have been going to cosmetologists at "unisex" beauty shops to get their hair cut.

There were 1,246 licensed barber shops in 1979. Approximately 296 of these were individual barber chairs within a shop that were licensed as separate shops. Thus, there were approximately 950 barber shop "locations" in fiscal year 1979. The number of licensed barber schools has remained stable; there were 4 in 1979, the same as in 1975. Three of the barber schools now operating are privately owned and the fourth is associated with an area vocational-technical school at the Hutchinson Industrial Reformatory. As such, the school at Hutchinson is also supervised by and subject to the approval of the Department of Education.

Does Kansas Need to Regulate the Practice of Barbering?

To assess whether there is a need for State regulation of the practice of barbering, the Kansas Sunset Law requires that Legislative Post Audit consider whether the absence of regulation would significantly harm or endanger the public health, safety, or welfare. The auditors' review of this area is discussed below.

Potential Harm in the Absence of Regulation

The types of services being provided by barbers today are in many respects similar to those provided by cosmetologists. The primary service, of course, is cutting and styling hair. But because of the changing attitudes about hair care, and because more barbers are working in beauty shops on both men and women, barbers also color, wave, straighten, and condition hair.

All 50 states regulate the practice of barbering. Because all 50 states have some form of regulation, the auditors could not compare any problems that exist in regulated states with problems existing in non-regulated ones. Therefore, to determine the type and magnitude of problems in the practice

All 50 states now regulate the practice of barbering, although the form of regulation varies. In brief, regulation is provided as follows:

Independent occupational regulatory board (like Kansas)	23 states
Umbrella regulatory agency	20 states
State health departments	4 states
Consolidation of the regulation of barbers and cosmetologists	3 states

of barbering, and to determine whether any such problems are serious enough to warrant State regulation, the auditors reviewed complaints received by the Board and the results of Board inspections. This review provided some indication of the problems that exist even with regulation. In addition, auditors interviewed public health officials and surveyed a random sample of licensed barbers to get their views as to the potential for harm in the absence of regulation.

Complaints. Records of complaints filed against an occupational trade like barbering are often a barometer of the kinds

and magnitude of problems that exist. The auditors reviewed Board records for fiscal years 1975 through 1979 and found no record of complaints being filed with the Board. The Board's Executive Director confirmed that no complaints had been received.

Auditors then contacted the three Better Business Bureau regional offices serving Kansas to determine whether these organizations receive consumer complaints against barber shops or barbers. Only one office keeps statistics on complaints by the type of occupation involved; it reported that barbering was a "low complaint" area and that it had not received any formal complaints relating to barbers in the past three years.

The fact that no complaints have been filed is due in part to the nature of the industry. The most common service provided by barbers is a haircut. While patrons may not always like the cut, it quickly grows out and no permanent harm occurs. Dissatisfied customers can often switch to another barber.

Inspections. Another way of assessing the potential harm to the public in the absence of regulation is examining problems uncovered during Board inspections. By law, all new shops and schools must be inspected by the Board before being licensed. The Board has also adopted an informal policy of inspecting shops at least twice a year and schools at least once a year. Inspectors assess the sanitary condition of equipment and supplies and check for compliance with other laws and administrative rules and regulations.

Board inspectors conducted 1,816 inspections of the 950 barber shop locations in fiscal year 1979, and five inspections at the four licensed barber schools in Kansas. The auditors reviewed all inspection reports filed

in fiscal year 1979 and found that violations of laws or Board regulations were cited on 399 of the 1,816 inspection reports. These 399 reports listed a total of 483 separate violations. All of the violations were noted at barber shops; none were identified at the barber schools.

Nearly 93 percent of the violations related to noncompliance with sanitation laws, rules, and regulations. The insert on this page shows that inspectors identified 359 violations (74 percent of the total) of sanitary laws and regulations regarding supplies and equipment (for example, non-functioning sterilizers, unwashed or unsterilized barber tools, towels, and brushes). Another 90 violations (19 percent) cited problems with unsanitary shops, such as unclean walls, ceilings, sinks, floors, or restrooms. Thirty-four violations (7 percent) were noted against administrative regulations not relating to sanitation; all but one referred to barbers' failure to display their licenses.

In enforcing the laws, rules, and regulations relating to barbers, the Board of Barber Examiners has the authority to suspend or revoke a license or close an establishment, either temporarily or permanently. Board records for fiscal years 1975 through 1979 show that the Board has ordered three shops temporarily closed--two shops had been cited for repeated sanitary violations, and the third involved a former licensee operating a shop without a valid license. All three closings occurred in 1979. The Board also held informal hearings with seven licensees in 1979, placing four on a one-year probation (including the two whose shops were temporarily closed by the Board), and warning three to correct violations of sanitary regulations or risk further Board action.

TYPES OF VIOLATIONS IDENTIFIED IN BARBER SHOP INSPECTIONS	
In reviewing the Board's fiscal year 1979 inspection reports, the auditors found that violations of administrative, sanitation, or safety laws and regulations were noted in 399 barber shops (36 percent of all shops). A total of 483 separate violations were found in these 399 shops, as follows:	
<u>Unsanitary Equipment and Supplies</u>	
Sterilizers not functioning, disinfectants not used	251
Barber tools, brushes, towels	98
Use of lump alum	9
Use of shaving mug	<u>1</u>
Subtotal	<u>359</u>
<u>Unsanitary Shop Conditions</u>	
Walls, ceilings, sinks, floors, restrooms	75
General shop cleanliness	12
Pet in shop	2
Barber hygiene	<u>1</u>
Subtotal	<u>90</u>
<u>Other Violations</u>	
License not displayed	33
No door enclosing or separating shop	<u>1</u>
Subtotal	<u>34</u>
TOTAL VIOLATIONS	<u><u>483</u></u>

Finally, the Board sent formal letters of warning to 26 shops regarding violations of sanitary regulations.

From the types of violations noted during inspections, it is difficult to determine any harm to the public that had occurred or that could have occurred. The majority of the problems noted during inspections involved violations of sanitary rules and regulations, yet no customers had complained to the Board of unsanitary conditions or of harm that had resulted from such conditions. It should be pointed out that, at the time most laws relating to sanitary conditions in barber shops were passed, it was commonly thought that a great many serious diseases--such as tuberculosis, scarlet fever, diphtheria, syphilis, gonorrhea, and measles--could be transmitted in barber shop settings. For example, it was thought that the use of shaving mugs promoted the spread of tuberculosis, a theory which the medical world has since disproved. To get a better idea of the types of diseases that could actually be transmitted in the setting of a barber shop or school, auditors contacted public health officials at both the State and federal level.

The health officials could name five health problems that could potentially be transmitted in such a setting: ringworm and other fungal infections, head lice, infectious dandruff, staph infections that may result in boils or other skin lesions, and infectious dermatitis. They stressed, however, that identifying the source of such diseases was almost impossible, that the likelihood of such diseases being transmitted in such a setting was extremely remote, and that none was of a nature to seriously endanger the health of an affected individual. The auditors could not check the frequency or source of such diseases in Kansas because the State does not require that incidence of infections of this type be reported.

Thus, even though the Board's recent activity in enforcing sanitary rules and regulations has the appearance of providing protection to the public, the auditors could find no evidence--either through complaints or in current medical knowledge--to suggest that any harm had come to the public as a result of these violations, or that any significant harm would have occurred if no regulatory body had been in existence to force corrective actions.

Survey of licensed barbers. The auditors also surveyed a random sample of 210 barbers to get their views as to what harm might befall the public in the event of deregulation of the industry. They also wanted to ensure that no problem areas were overlooked. Altogether, 56 barbers (approximately one-fourth of those surveyed) responded to the survey. (A summary of the survey results is available from Legislative Post Audit upon request.) Of these, 42 indicated they felt some harm would result from deregulation. Their major areas of concern can be summarized as follows:

<u>Potential Harm</u>	<u>Number of Responses</u>
Barbers would be untrained	12
Quality of barber work would suffer	8
Sanitation levels would decrease	8
The profession would be hurt	7
Diseases would be more likely to be transmitted	5
New competition would affect prices	<u>2</u>
Total	<u><u>42</u></u>

The auditors carefully considered all areas of concern raised by the barbers. Nearly half their concerns related to a potential decrease in the quality of services provided (barbers would be untrained, quality of work would suffer).

While it is true that the Board's licensing function helps assure a minimum level of competence, the absence of that function would not result in any significant harm to the public. At most, the quality of the haircuts, permanents, hair coloring, and similar services provided by barbers would decrease. Two economic factors exist, however, which would help prevent that from happening. First, individuals seeking to make a living as barbers would continue to be trained at barber schools or as barber apprentices to pick up the necessary skills and knowledge. Second, given the industry's dependence on return business--the barbers surveyed said that 96 percent of their customers visit their shops occasionally or regularly--barber shops owners have a vested interest in ensuring that their barbers are competent and perform satisfactorily. Dissatisfied customers are unlikely to patronize a barber shop again if they receive poor service. This second factor would also apply to the barbers' concern that sanitation levels would decrease--customers are unlikely to continue to patronize shops that are unclean.

Because public health officials indicated no serious diseases could be transmitted in a barber shop setting, Legislative Post Audit concluded that, without regulation of barbering, the spread of disease did not represent a serious threat to public health. Finally, the auditors considered the barbers' point that competition would affect prices (presumably by lowering them). Given the decline in the number of and the demand for barbers in recent years, this concern may be understandable for those barbers trying to make a reasonable living. However, their point also provides an indication that at least some practitioners view the purpose of regulation as protecting the industry by insulating barbers against competitive market forces rather than protecting the public from significant harm.

Taken together, the lack of complaints against barbers, the lack of evidence that harm had resulted from sanitary violations discovered in

barber shops, and the lack of evidence that serious diseases could be transmitted in a barber shop setting led Legislative Post Audit to conclude that the absence of regulation of the practice of barbering would not result in any significant harm to the public's health, safety, or welfare.

Does State Regulation Protect the Public Health, Safety and Welfare?

The primary purpose of regulation is to protect the public. Studies have shown, however, that regulatory agencies may become sympathetic to --even dominated by--the industries they regulate. These agencies may create policies and take actions that benefit the industry rather than the public. To address this concern, the Sunset Law calls for Legislative Post Audit to determine whether all facets of the regulatory process are designed solely to protect the public, whether such protection is the primary effect of regulation, and whether there is a reasonable relationship between the State's exercise of its police power in this regulatory activity and the protection of the public.

The auditors reviewed the Board's rules and regulations, statutory requirements, inspection and complaint investigation procedures, examination and licensing activities, and enforcement policies to determine whether these activities served to protect the public. In several areas, they found laws, regulations, and policies pertaining to barbering that appear to benefit the industry by setting up what appear to be arbitrary and unwarranted requirements for entry into the field. Such requirements may restrict competition in the State. Thus, in these areas the State's police power in regulating barbers does not appear to be reasonable. The auditors also found problems with the inspections conducted by the Board and with the composition of and the absence of public representation on the Board. Each area is discussed separately below.

Restrictive Licensing Requirements for Barbers

Becoming a licensed barber in Kansas is a two-year process. To become licensed, an individual must attend a licensed barber school, where he or she must complete 1,500 hours of training. Following the training, the individual must pass a written and practical examination administered by the Board to become eligible to serve the required 12-month apprenticeship under the supervision of a licensed barber. Following the apprenticeship, the individual must again pass a written and practical demonstration examination administered by the Board. Applicants for licensure are also subject to a number of other requirements--being 16 years old, submitting two certificates of good moral character, submitting two photographs, taking a physical examination, having a high school education, and being a U.S. citizen.

After examining these requirements, the auditors found several that do not appear to be designed solely to protect the public. The apprenticeship requirement does not appear to be necessary to ensure that barbers are qualified to practice; it may, in fact, do more to limit the number of barbers wanting to enter the field. Furthermore, the process contains age, education, physical examination, U.S. citizenship, and related requirements that do not relate to the skills necessary for a barber and have no bearing on protection of the public.

Apprenticeship requirement.

Before an applicant is eligible to serve the required 12-month apprenticeship, he or she must pass a comprehensive written examination covering sanitation, health, and safety requirements; physiology; barbering techniques; law; and business practices. The applicant must also pass a practical examination, graded by Board members, which consists of giving a tapered haircut, shave, facial, and shampoo.

Once the individual has completed the apprenticeship, he or she must again pass a written and practical demonstration examination administered by the Board. The practical examination is nearly identical to the earlier practical examination; the written examination is much less comprehensive than the earlier written examination. It tests applicants over their knowledge of certain statutory provisions and administrative regulations.

**When Regulation Does Not
Protect the Public: An Example**

Legislative Post Audit's review of the Board's history revealed that, at least in the past, the Board viewed its role as limiting the supply of barbers in Kansas. In January 1958, a new barber school opened in Topeka but was closed by the Board the following day. (At the time, the only barber school in the State was in Wichita.) The school instructors, who owned the school, had failed the Board's examination for an instructor's license. These individuals initiated a lawsuit against the Board, alleging that the exam had been conducted in a "capricious, unwarranted, and highly unreasonable manner."

In September 1960, the Shawnee County District Court overturned the Board's refusal to issue a school license. The Court ruled that the exams were "rigged" and ordered that new exams be given. The Judge pointed out that it was clear the instructors had failed the examination because the Board members opposed the establishment of a barber school in Topeka. One board member had testified that one of the functions of the Board was to determine the supply of barbers. Other Board members had expressed concern that the presence of the school would harm the financial stability of the barber shops in Topeka, since rates charged at barber schools are much lower than commercial shop rates. However, the court held that the Board's purpose was a public health measure, and that the Board had erred in considering the supply of barbers when grading the examinations.

The auditors' review of the dual testing requirement and the apprenticeship requirement led to several interesting observations. First, the initial written examination is comprehensive and appears to be better suited to testing for the appropriate skills and knowledge. It is this first written examination that is given to out-of-State barbers wanting to practice in Kansas. If they do not need to take the second written examination covering statutory provisions and administrative regulations, there appears to be no reason why Kansas barbers must take it.

Second, the auditors found that the requirements were more stringent than the requirements for Kansas cosmetologists, who perform essentially the same or even more varied services. The Board of Cosmetology considers attendance at a beauty school or an 18-month apprenticeship, and passage of one set of examinations, sufficient training and testing to ensure that cosmetologists are qualified to practice.

Third, the auditors compared the apprenticeship requirement and the dual testing requirement with the requirements in other states. They found that Kansas is one of 41 states with an apprenticeship requirement beyond the training received in barber schools, and that it is one of 30 states requiring applicants for a barber license to pass two sets of examinations. Although Kansas' requirements are equivalent to the majority of the other states' requirements, the auditors noted a slow trend among other states toward eliminating the apprenticeship requirement. Since 1975, eight states have abolished it.

Finally, the Board itself earlier this year considered abolishing the apprenticeship requirement and giving only one set of examinations covering all advanced techniques of hair styling. At the time of this audit, however, no formal decision had been made.

The auditors' observations and review provided no overwhelming evidence either way that the apprenticeship requirement and the second written and practical examinations did or did not serve to protect the public. However, the evidence does suggest that these requirements may be unnecessary; both the Board of Cosmetology and a number of other states apparently feel they can ensure that practitioners are adequately trained without them. Consequently, the possibility of eliminating these requirements bears careful consideration by the Board and the Legislature. At a minimum, the option of attending a barber school or completing an apprenticeship, as is currently allowed by the Board of Cosmetology, should be considered.

Age, education, physical examination, and related requirements. The auditors compared the Board's requirements in these areas with the requirements in six other states--Colorado, Iowa, Missouri, Nebraska, Oklahoma, and Texas. These other states' requirements varied. Some had similar or more stringent requirements, others required less. For example, four of the

six states do not require certificates of good moral character, and applicants in three states are not required to have a physical examination.

Even though to varying degrees at least some of the six states had such regulations, Legislative Post Audit could find no rationale for continuing them in Kansas. For example, the auditors questioned the need for the physical examination required by the Board, which tests for tuberculosis and venereal diseases. Public health officials they interviewed stated that the physical examination requirement was unjustified because the chance of such diseases being transmitted in the setting of a beauty shop or school was extremely remote. None of the other requirements seem to have any closer relationship to the skills necessary to become a barber or to the protection of the public's health, safety, and welfare. These factors led Legislative Post Audit to conclude that the State's exercise of its regulatory authority in these areas was unreasonable and unwarranted.

Inspections conducted by the Board. One major purpose of the Board is inspecting shops and schools to ensure that they comply with laws, rules, and regulations pertaining to sanitation and safety. These inspections are carried out by one full-time and one part-time inspector, both of whom must be barbers licensed by the Board. The law permits but does not require the Board to inspect all shops and schools; however, the Board has adopted an informal policy of inspecting all shops twice a year and each school once a year. In fiscal year 1979, a total of 1,816 inspections were conducted at the 950 barber shop locations, and five inspections were conducted at the four barber schools in Kansas. It would appear that each shop is inspected at least twice a year. However, because the Board has no timetable or schedule for inspections--these are essentially set by the inspectors themselves--and because the inspectors keep their own records, the Board has no systematic way of ensuring that its inspection goals are being met.

The auditors also reviewed the training requirements for Board inspectors and found that inspectors are not provided with any formal guidelines on how to conduct inspections, how to identify violations, or what action to take after noting a specific violation. Nor are the inspectors required to have any formal training in public health or sanitation, the two principal areas of review during inspections. Because of this, inspectors have a great deal of discretion both in identifying violations of law and in specifying the corrective measures that must be taken. The auditors found a marked difference between the Board's two inspectors with respect to how frequently violations are cited. In fiscal year 1979, one inspector identified violations at 24 out of every 100 shops inspected; the other inspector identified violations at 12 out of every 100 shops inspected, or half as many. The fact that inspectors are not trained and have no formal guidelines to follow suggests that shops are not judged by the same standards and that the value of these inspections in protecting the public's health, safety, and welfare is suspect.

Composition of the Board. The Board of Barber Examiners comprises three members appointed by the Governor for staggered three-year terms. By law, each member must have at least five years of barbering experience. In addition, one member must be a member of a trade association (Associated Master Barbers and Hair Stylists of America) and at least one must belong to a union (Barbers, Beauticians, and Allied Industries International Association). Two of the current Board members either have been or are presently officers in these organizations.

This close connection with the industry raises a serious question of potential conflict of interest: Can Board members who are also officers of related occupational associations or unions objectively promote the public interest? In addition, the fact that there are no public representatives on the Board is an imbalance of the interests of the public and the industry. The public would be better served to have more direct representation on the Board, at least with the addition of one public representative.

Is Regulation Worth Its Cost?

To assess whether the benefits of regulation justify its costs, the Kansas Sunset Law calls for analyses in two areas: a determination of the degree to which regulation increases the cost of goods and services, and a determination of whether the increased cost is more harmful than an absence of regulation. To address these areas, the auditors first identified costs that could be most directly related to the activities of regulation. The most direct administrative costs are license fees.

The operations of the Board are supported entirely by fees collected for examinations, licenses, and license renewals. During fiscal year 1979, fee receipts totaled \$72,301. As the following figure shows, the major license fees range from \$5 for a barber shop renewal license to \$300 for a school license, both new or renewal.

Type of License	License Fee
Student certificate	\$ 25
Apprentice examination	30
Apprentice renewal	25
Barber license	25
Barber examination	30
Barber renewal	25
School license; new or renewal	300
New shop license	30
Shop renewal	5
Shop transfer; change of ownership	30

To determine whether these charges had a significant impact on the cost of services to consumers, the auditors attempted to compare the total of \$72,301 with the industry's total volume of business. However, no source of information was available in which the barbers' total volume of business was gathered. The only available estimate came from the Department of Economic Development, which showed that in 1977 the total payroll for barbers was approximately \$1.8 million. Because this figure excludes profits, salaries of barber shop owners, and such overhead costs as space, supplies, and equipment, it is likely to be much smaller than the actual total volume of business. Because they had no better data, the auditors compared the total payroll of \$1.8 million with the \$72,301 in fees. The fees collected represent about four percent of the total payroll. Because this percentage is likely to be much lower, Legislative Post Audit concluded that direct administrative costs do not appear to significantly affect the cost of goods and services to the public.

Auditors also looked at the licensing requirements for a barber and found that several impose indirect costs. The major indirect cost is tuition at a barber school. The cost for the required 1,500 hours of training varies among the three private barber schools in Kansas, from a low of \$1,409 to a high of \$2,418. Although these costs are relatively high, the tuition costs charged by these schools do vary and do not appear to impose an unreasonable cost for providing training in an occupation.

Assessing other, more indirect costs--such as the cost of maintaining clean shops and restrooms and sterilizing equipment and supplies--is more difficult. Many barber shop owners would adhere to these standards voluntarily as a matter of good business practices. If some shops or schools adhere to such standards only because they know they are required to do so, will be inspected, and may be closed temporarily or permanently by the Board if they violate these standards, the related costs add at most only a few cents to the public's costs.

In their survey of licensed barbers, the auditors asked several questions concerning the effect of Kansas laws and regulations on the costs associated with regulation. The majority of the barbers responding--89 percent--felt that the costs involved in becoming licensed do not discourage individuals from seeking a license. They also did not feel that the requirements increased their cost of practicing. Almost 94 percent indicated that if the regulatory requirements were repealed, their costs would not be significantly reduced.

Taken together, these factors led Legislative Post Audit to conclude that the cost of regulating the practice of barbering did not appear to significantly increase the public's cost for goods and services. However, because the potential for harm in the absence of regulation does not appear to be significant, any costs transmitted to the public because of regulation may be unwarranted.

Alternative Methods of Regulation

One of the requirements of the Kansas Sunset Law is to determine whether there are alternatives for regulating the practice of barbering that are less restrictive but still effective in protecting the public from any significant harm.

As discussed in previous sections of this chapter, the auditors' review of complaints and investigations and their conversations with public health officials provided no evidence that the public was being significantly harmed by barbers or that it would be harmed in the absence of regulation. The auditors found that the Board of Barber Examiners had taken some disciplinary actions against barbers who had violated sanitary regulations. However, based on their findings, the auditors concluded that no harm would have come to the public if these violations had gone uncorrected. The auditors also found that the apprenticeship requirements and many of the requirements relating to age, education, physical examinations, and the like had no bearing on the skills necessary for a qualified barber, and did not appear to protect the public from harm.

Because they found no demonstrable harm of a serious nature occurring in the industry, the auditors examined the possibility of eliminating regulation provided by the Board. They also examined the possibility of retaining the Board but eliminating those areas of regulation that are not designed solely to protect the public. Finally, they examined the possibility of consolidating the Board of Barber Examiners with the Board of Cosmetology.

Eliminating the Board of Barber Examiners

If regulation provided by the Board were eliminated, some regulation would nonetheless continue. The one public barber school in Kansas is now supervised and approved by the Department of Education. Should the Board be abolished, the three private schools would fall under the Department's jurisdiction pursuant to the Proprietary Schools Act. The Food and Drug Administration would also continue to regulate the chemicals and products used in barbering. No systematic inspections would be conducted at barber shops, but nearly three-fourths of the barbers responding to the survey indicated that their shops had been inspected by local fire officials, local or state health officials, or private insurance companies (about half the barbers said they were covered by malpractice insurance). These inspections do not cover all barber shops; if necessary, regularly scheduled inspections could be conducted by the Department of Health and Environment.

If the Board were abolished, complaints regarding public health matters (unsanitary shops, equipment, or supplies) could be addressed to

local health officials, the Department of Health and Environment, or the Fire Marshal's Office. Complaints or grievances alleging overcharging or incompetence could be handled through the Consumer Protection Division of the Attorney General's Office. For any damage or harm that could occur, the public's recourse, as it is now, would be through the courts or through the malpractice insurance of those barbers who carry it.

Finally, without the Board, barber school requirements regarding the number of courses taught, the number of hours, instructors' qualifications, and the like would be established by the Department of Education, presumably along the same lines they are now established. One-time certification that an individual had successfully completed the required courses and hours at an approved barber school could also be provided by the Department. This certification would help ease any problems barbers may have in transferring to other states to practice or in obtaining malpractice insurance, either for themselves or for their shops.

Thus, although some form of regulation or supervision would continue, that regulation or supervision could be provided without the Board and would be less restrictive than the regulatory activities now provided by the Board.

Retaining the Board

The auditors examined the possibility of retaining the Board and its major functions in the areas of inspections, training, licensing, handling complaints, and enforcing laws and regulations pertaining to barbering. If the Board were re-established, Legislative Post Audit concluded that the laws, regulations, and policies that do not serve to protect the public and that may arbitrarily restrict entry into the field should be reviewed and revised. Specifically, these areas would include the following:

- eliminating the apprenticeship requirement for individuals training to become licensed barbers. The option of training either in a licensed barber school or as an apprentice to a licensed barber could be considered, along the same lines as the training options for cosmetologists in Kansas.
- eliminating current requirements for age, education, physical examinations, statement of good moral character, U.S. citizenship, and the like that do not serve to protect the public, that may artificially restrict entry into the field, or that have no bearing on the qualifications necessary to practice barbering.
- establishing timetables or schedules for inspections of barber shops to help ensure that each shop is inspected at least twice a year, as called for in the Board's policies.
- providing formal guidelines and training for Board inspectors.

In addition, to provide for better public representation on the Board if the Board is retained, the laws should be changed to prohibit members of the Board from being officers in occupational trade associations or unions, and to place at least one representative of the general public on the three-member Board.

Consolidation With the Board of Cosmetology

The auditors' review of the functions of the Board of Barber Examiners and the Board of Cosmetology showed a strong argument for consolidating the two boards if the State continues to regulate both.

In all regulatory areas, the statutory responsibilities, duties, and purpose of regulation of the Board of Barber Examiners and the Board of Cosmetology are similar, if not identical. Individual licensing requirements for the two occupations vary, but both boards examine and license practitioners, renew licenses, license and inspect shops and schools, handle complaints from the public, and have the authority to discipline practitioners and close shops.

Recent changes in the public's view toward hair styling have also brought the practices of barbering and cosmetology closer together; both barbers and cosmetologists often operate out of the same shop, serving both men and women. In Topeka alone, 24 of the 56 barber shops are listed in the yellow pages of the telephone directory under the listing for beauty shops. In Wichita, the number is less; 19 of 112 barber shops are also under the beauty shop listing. According to the Board, 12 of the 24 shops in Topeka and 11 of the 19 shops in Wichita are not licensed barber shops. These are beauty shops that evidently felt it was to their advantage to advertise their services to barber shop clientele as well.

There are other strong arguments for consolidating the two boards. Although no formal records regarding duplicate inspections are kept by either board, the auditors found that some duplication exists. For example, barber inspections will sometimes note (although not systematically) on an inspection form that a cosmetologist is working in a barber shop; barber inspection reports for fiscal year 1979 showed that at least 127 cosmetologists were working in the 950 barber shop locations across Kansas. In addition, according to administrative regulations, any licensed barber shop employing a licensed cosmetologist must also be inspected by the Board of Cosmetology and licensed as a cosmetology shop. The reverse is true for a cosmetology shop employing barbers as well, although this is a matter of policy rather than regulation. Consolidating the two boards would mean that only one inspection would need to be conducted at shops in which both barbers and cosmetologists worked, thus helping to eliminate duplication and reduce travel costs. Other advantages of consolidation would include increased administrative efficiency in processing licenses and conducting examinations.

Finally, the auditors found that increased efficiency and elimination of duplicate inspections could also result in lower license and examination fees for barbers, barber shops, and barber schools. Kansas' initial license and examination fees for barbers are now \$110, the fourth highest in the country. Only in Tennessee, Arizona, and Nevada are the costs higher. The average cost for all 50 states is \$80; in 26 states, the initial cost of license and examination fees is less than \$50.

As the table on this page shows, the initial licensing costs for barbers are also \$89 more than the initial fees for cosmetologists, who perform much the same services. Once licensed, Kansas barbers pay \$25 per year to renew their licenses compared with \$7 for Kansas cosmetologists. The difference in fees for barbers and cosmetologists is not difficult to explain. Because there are fewer and fewer barbers and barber trainees, the amount of fees collected have not kept pace with rising administrative costs, such as travel and per diem expenses for Board inspectors. (Between fiscal years

COMPARISON OF MAJOR FEES CHARGED BY THE BOARD OF BARBER EXAMINERS AND THE BOARD OF COSMETOLOGISTS		
<u>Permits or Licenses</u>	<u>Fees Charged</u>	
	<u>Barbers</u>	<u>Cosmetologists</u>
<u>Initial Licensing Steps</u>		
Student or Apprentice Exam	\$ 25	None
Student or Apprentice License	30	\$ 6
License Exam	25	15
Initial License	<u>30</u>	<u>None</u>
Total Initial Fees	<u>\$110</u>	<u>\$ 21</u>
<u>Annual License Renewal</u>	\$ 25	\$ 7
<u>Shop License</u>		
New License	\$ 30	\$ 20
Annual Renewal	5	10
Transfer of ownership	30	5
<u>School License</u>		
New School	\$300	\$100
Annual Renewal	300	25

1975 and 1979, the Board of Barber Examiners' expenditures rose 37 percent while receipts increased by only 14 percent.) Thus, barber fees are set at the maximum allowed by law to enable the Board of Barber Examiners to operate on an essentially break-even basis. (The 1980 Legislature also increased the maximum limit for barber fees by an average of \$10-\$30 per fee, effective in fiscal year 1981.) By contrast, the number of and demand for cosmetologists and, thus, the amount of cosmetology-related fees collected, have grown faster than the Board of Cosmetology's expenses. (In the past five years, the Board's receipts increased by 33 percent while its expenditures increased by only 21 percent.) Thus, cosmetologists' fees have remained low. Consolidating the two boards should lower and perhaps equalize the fees charged barbers and cosmetologists.

In the survey conducted by Legislative Post Audit, both barbers and cosmetologists were asked if the two boards could be consolidated without causing harm to the public. Forty-two percent of the barbers responding to the survey agreed the two boards could be consolidated without causing harm. Cosmetologists were more receptive to the idea--62 percent of those responding agreed that the two boards could be combined.

If consolidation were to take place, a five-to-seven member Board could be established with up to three members representing the general public interest. Further, the laws, regulations, and policies that benefit the industry or that do not serve to protect the public, as discussed in the preceding section, should still be reviewed and revised.

Conclusion

After careful review, Legislative Post Audit concluded that the Board of Barber Examiners was not needed to regulate the practice of barbering. Briefly, the reasons are as follows:

1. Potential for harm in the absence of regulation. Over the past five years, no formal complaints against the industry have been filed with the Board. Violations are being uncovered, and in 1979 the Board took some disciplinary actions against both barbers and barber shops; however, there was no demonstrable evidence that harm had occurred or that it would have occurred had the Board not been in existence to force corrective actions.
2. Protection of the public. Auditors found that several aspects of the Board's regulation do not serve to protect the public or may be restricting qualified individuals from entering the field. These aspects include a one-year

apprenticeship requirement beyond the training received in a barber school; age, education, physical examination, U.S. citizenship, and similar requirements that have no bearing on the skills or qualifications barbers need to practice; the lack of training or formal guidelines for Board inspectors; and the lack of public representation on the Board. These and other aspects of the regulatory activity do not have public protection as their primary effect and, as such, appear to be an unreasonable exercise of the State's police power.

3. Costs. Although the costs of regulation do not appear to significantly increase the costs of services to the public, any costs being transmitted may be unwarranted in view of the insignificant potential for harm without regulation.
4. Alternative methods of regulation. In the absence of the Board, less restrictive methods of regulation are available. By law, all barber schools would be supervised and approved by the Department of Education, and chemicals used in beauty products would be regulated by the federal government. The need for one-time certification of training at an approved barber school or under a certified practicing barber may exist so that barbers can transfer to other states and obtain malpractice insurance. However, this certification can be provided by the Department of Education; a Board does not appear to be necessary. Auditors also examined the possibility of retaining the Board but revising or eliminating aspects of regulation that are not in the public's interest or that do not protect the public or ensure competency, and of consolidating the Board of Barber Examiners with the Board of Cosmetology. If the Board is not abolished, Legislative Post Audit concluded it should be consolidated with the Board of Cosmetology.

Recommendations

1. The Legislature should take no action to re-establish the Board of Barber Examiners and its regulatory function over the practice of barbering.
2. In abolishing the Board, the Legislature may want to consider introducing legislation to do the following:

- a. establish minimum training requirements that individuals must meet before becoming practicing barbers
 - b. provide for one-time certification by the Department of Education that schooling or apprenticeship requirements have been met
3. Although Legislative Post Audit recommends that the Legislature not re-establish the Board of Barber Examiners, if the Board is re-established, Legislative Post Audit recommends that at a minimum the Board be consolidated with the Board of Cosmetology. A new five-to-seven member Board should be created to regulate the practices of barbering and cosmetology, with up to three members representing the general public interest. In consolidating the two boards, the Legislature should also ensure that the following changes are made in the regulation of barbers:
- a. Eliminating the apprenticeship requirement for individuals training to become licensed barbers. The option of training either in a licensed barber school or as an apprentice to a licensed barber could be considered, along the same lines as the training options for cosmetologists in Kansas.
 - b. Eliminating current requirements for age, education, physical examinations, statement of good moral character, U.S. citizenship, and the like that do not serve to protect the public, that may artificially restrict entry into the field, or that have no bearing on the qualifications necessary to practice barbering.
 - c. Establishing timetables or schedules for inspections of barber shops to help ensure that each shop is inspected at least twice a year, as called for in the Board's policies.
 - d. Providing formal guidelines and training for Board inspectors.
 - e. Prohibiting members of the newly-created Board from being officers in occupational trade associations or unions.

CHAPTER III

BOARD OF COSMETOLOGY

Introduction

Much of the impetus for regulating the practice of cosmetology arose out of the controversy as to whether the Board of Barber Examiners, established in 1913, had jurisdiction over cosmetologists. A 1923 decision by the Kansas Supreme Court that cosmetologists did not fall under the regulation of the Board of Barber Examiners, combined with pressure from cosmetologists for creation of their own independent occupational licensing board, led to the Legislature's creation in 1927 of the State Board of Registration for Cosmetologists. The newly created Board licensed individuals who wanted to practice as cosmetologists and licensed and supervised beauty shops and schools of cosmetology. A 1943 amendment to the law also required the Board to inspect the equipment and sanitary conditions of any new beauty shop. In 1969, the Board was restructured and renamed the Board of Cosmetology.

An early concern at the time the Board was first established was preventing the spread of infectious and contagious diseases. This concern had been primary in establishing the regulation of barbers. Over the years, regulation has also been geared toward upgrading courses offered by cosmetology schools, developing practitioners' expertise, and ensuring that only properly qualified individuals are allowed to practice. The subjects and hours of instruction for courses offered by schools of cosmetology have been set in law. In addition, to qualify for a license, individuals must meet minimum requirements in such areas as age, education, and training (either in a school or as an apprentice). They must also pass a written and practical demonstration examination administered by the Board.

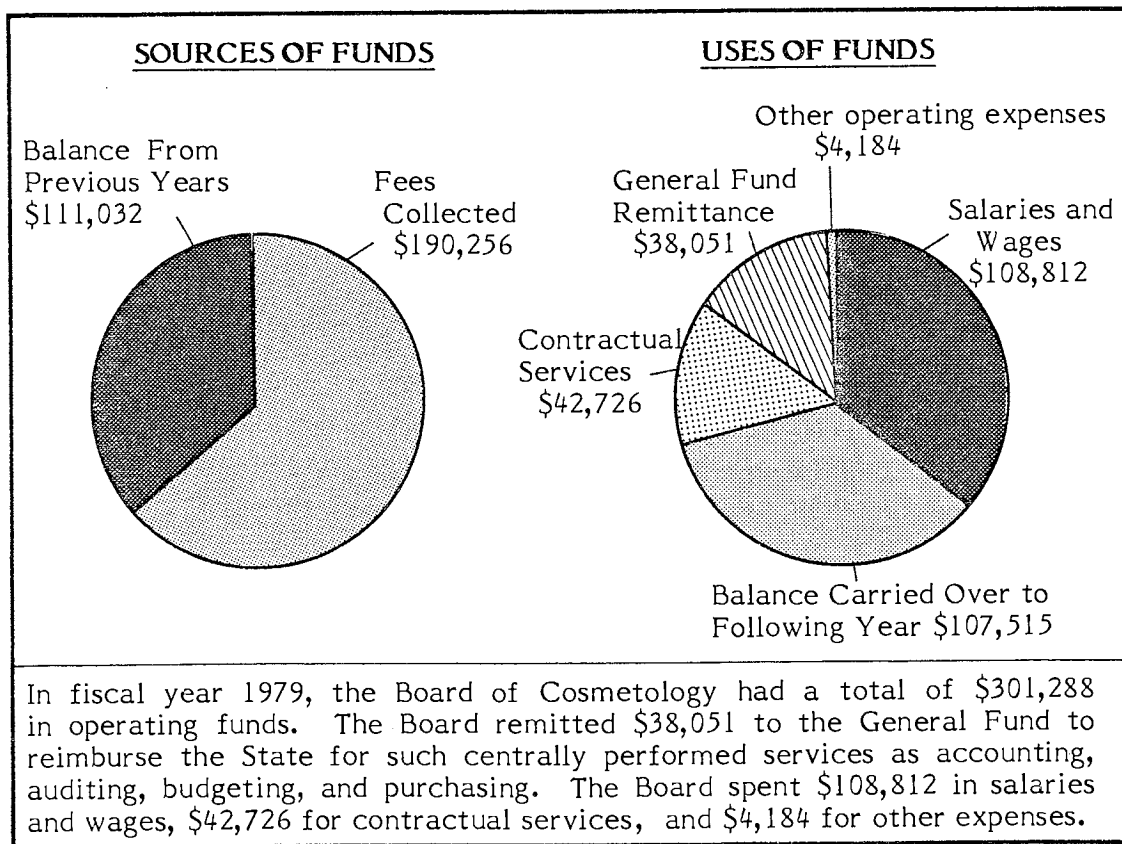
The Board of Cosmetology has five major functions in regulating the practice of cosmetology. These functions can be summarized as follows:

- administering written and practical demonstration examinations to students of cosmetology. These exams test students' knowledge of proper hair cutting and styling techniques and the proper use and application of beauty products, their knowledge of sanitation techniques, and their knowledge of certain infectious and contagious diseases.
- licensing all cosmetologists, beauty schools, and beauty shops in Kansas, both initially and annually.

- inspecting all new and established cosmetology schools and beauty shops for compliance with sanitation and safety requirements regarding supplies, equipment, and general cleanliness, and for compliance with administrative regulations regarding such things as displaying licenses.
- handling complaints from consumers and from individuals within the industry.
- enforcing laws and regulations and bringing about any needed changes as a result of inspections or complaints.

To carry out these functions, the Board appoints an Executive Director, who supervises the daily operations of the office and the activities of three inspectors and four clerical personnel. The Board itself comprises five members--one from each congressional district. Four members are required to be licensed cosmetologists; two of the four must operate a licensed beauty shop. The fifth member may not hold any license issued by the Board and represents the general public interest. The current Board members, who are appointed by the Governor for three-year terms, and the current Executive Director are listed in Appendix A.

In fiscal year 1979, there were 17,474 licensed practitioners in Kansas, including cosmetologists, manicurists, students, and instructors. This is an



increase from 16,937 five years earlier. There were also 3,889 licensed beauty shops in 1979, up from 3,851 shops in 1975, and 28 licensed schools, approximately the same as in 1975. Ten of the cosmetology school programs are offered at community colleges, area vocational-technical schools, or Pittsburg State University. As such, these programs are also supervised and subject to the approval of the Department of Education or the Board of Regents. Eighteen are private schools of cosmetology; 9 of the 18 private schools of cosmetology are also accredited by the Cosmetology Accrediting Commission to be eligible for federal funding.

Does Kansas Need to Regulate the Practice of Cosmetology?

To assess whether there is a need for State regulation of the practice of cosmetology, the Kansas Sunset Law requires that Legislative Post Audit consider whether the absence of regulation would significantly harm or endanger the public health, safety, or welfare. The auditors' review of this area is discussed below.

Potential Harm in the Absence of Regulation

The most common types of services provided by cosmetologists are cutting and styling hair and waving, straightening, coloring, or conditioning hair. Because these services include the application of chemicals and other beauty products to the hair and skin, and because customers come into direct contact with supplies and equipment (combs, brushes, rollers, and the like), misuse or misapplication of beauty products and the use of unsanitary supplies and equipment may present the potential for harm.

All 50 states regulate the practice of cosmetology. Because all 50 states have some form of regulation, the auditors could not compare problems that exist in regulated states with problems existing in non-regulated ones. To determine the type and magnitude of cosmetology-related problems in Kansas, and to determine whether any such problems could cause harm serious enough to warrant State regulation, the au-

All 50 states now regulate the practice of cosmetology, although the form of regulation varies. In brief, regulation is provided as follows:

Independent occupational regulatory board (like Kansas)	23 states
Umbrella regulatory agency	20 states
State health departments	4 states
Consolidation of the regulation of barbers and cosmetologists	3 states

ditors reviewed complaints received by the Board and the results of Board inspections. This review provided some indication of the problems that exist even with regulation. In addition, they interviewed public health officials and surveyed a random sample of licensed cosmetologists to get their opinions as to the potential for harm.

Complaints. One possible indication of potential harm is the record of complaints made by consumers. The auditors reviewed central complaint files maintained by the Board for 1977 through 1979 and found that 70 complaints had been recorded (an average of one complaint per 1,000 cosmetologists each year). More than a third of these complaints were identified as coming from individuals within the occupation (students, licensees, Board inspectors). According to the Board's Executive Director, many complaints received over the telephone are handled informally through letters and telephone calls. Such complaints are usually not recorded and kept in the Board's complaint file.

The auditors reviewed all 70 complaints on file. These complaints were in the following areas:

- practicing without a license or in an unlicensed shop (44 complaints)
- unsanitary shop conditions (for example, a dog in the beauty shop, evidence of insects, shop generally dirty) (14 complaints)
- poor quality service (for example, unsatisfactory permanent, verbal abuse, ineffective skin treatment) (6 complaints)
- other miscellaneous areas (for example, failure to post a business sign) (6 complaints)

In 48 of these 70 complaints, the Board did not find or did not verify that any law or procedure had been violated. Many of these 48 complaints were handled by the Executive Director through a letter or through inspections. In the remaining 22 complaints, the Board verified that laws or procedures had been violated. Of these, 10 involved practicing without a license or in an unlicensed shop, 11 involved unsanitary shop conditions, and 1 involved failure to post a business sign indicating that the place of business was a beauty shop. None of these complaints alleged that harm had occurred.

During their investigations of Board actions taken in response to complaints, the auditors also reviewed Board minutes. They found reference in the minutes to an additional 20 complaints that were formally presented for the Board's consideration during fiscal years 1977 through 1979 but that were not recorded in the central complaint file. The auditors discerned that at least five of these complaints were verified by the Board as valid; three were made by Board inspectors regarding unsanitary shop conditions at a cosmetology school, one was made by a student who complained about an outbreak of body lice at a cosmetology school (the Department of Health

and Environment was also contacted), and one involved telephone complaints about a cosmetologist's illegal use of television advertising.

Finally, the auditors contacted three Better Business Bureau regional offices serving Kansas to determine whether they had received any consumer complaints against beauty shops or practitioners. Only one office keeps statistics on complaints by the type of occupation involved; it received four complaints in 1977, all relating to customer dissatisfaction (for example, permanents that did not hold their wave).

Inspections. As another way of assessing the potential harm to the public in the absence of regulation, the auditors examined the kinds of problems that are discovered through inspections conducted by the Board. By law, all new shops and schools must be inspected by the Board before being licensed. The Board has also adopted an informal policy of inspecting shops at least once a year and schools at least four times a year. Inspectors assess the general sanitary condition of equipment and supplies and check for compliance with laws and administrative rules and regulations.

In fiscal year 1979, Board inspectors completed 2,711 inspections of the 3,889 licensed beauty shops. (Inspectors attempted to complete inspections at 1,152 other shops that were not open at the time they called. Thus, they obviously did not meet the Board's goal of inspecting each shop once a year.) Fifty-eight of the 2,711 completed inspections fit into the category of "special inspections," which are either follow-up inspections of shops with previous violations or inspections the Board directs because of a complaint. The Board also conducted 63 inspections at the 29 licensed schools of cosmetology (one school closed later in the year).

The auditors reviewed all inspection reports filed in fiscal year 1979 to determine the magnitude of problems and violations identified by the inspectors. Their review showed that inspectors had found violations of administrative, sanitation, or safety requirements in 164 beauty shops (four percent of the total number of shops). None were noted at the cosmetology schools. Most violations cited against beauty shops related to sanitary conditions. As the table on the following page shows, 62 violations were noted against the sanitary condition of supplies and equipment (for example, unwashed or unsterilized combs, brushes, towels, or rollers, or non-functioning sterilizing equipment). Another 62 violations were noted against unsanitary shop conditions (for example, generally unclean shops, unclean restrooms or supply rooms, uncovered trash containers and hampers). The remaining 40 violations cited noncompliance with administrative regulations, including failure to display a license, practicing without a license, and other miscellaneous areas.

From the types of violations identified, it is difficult to determine what harm either had occurred or could have occurred to the public. Because the majority of the violations related to unsanitary conditions, and

because the rationale behind correcting such violations is preventing the spread of disease, the auditors contacted public health officials at both the State and federal level to identify related health problems.

TYPES OF VIOLATIONS IDENTIFIED IN BEAUTY SHOP INSPECTIONS	
In reviewing the Board's fiscal year 1979 inspection reports, the auditors found that violations of administrative, sanitation, or safety laws and regulations were noted in 164 beauty shops (four percent of all shops). These violations occurred in the following areas:	
<u>Unsanitary Equipment and Supplies</u>	
Sterilizers not functioning	38
Rollers, permanent rods	11
Towels, combs, brushes	8
Dispensary	4
Unenclosed storage cabinets	1
Subtotal	<u>62</u>
<u>Unsanitary Shop Conditions</u>	
General shop cleanliness	32
Supply room, shampoo room, and restroom	20
Uncovered trash containers and hampers	9
Pet in shop	1
Subtotal	<u>62</u>
<u>Other Violations</u>	
License not displayed	14
Practicing without a license	5
Inspection report not posted	3
Miscellaneous (unfinished restroom, no outside sign, shop used for other use)	18
Subtotal	<u>40</u>
TOTAL VIOLATIONS	<u><u>164</u></u>

The officials could name five health problems that could potentially be transmitted in the setting of a beauty shop or school: fungal infections like ringworm, head lice, infectious dandruff, staph infections that may result in boils or other skin lesions, and infectious dermatitis. They stressed, however, that identifying the source of such diseases was almost impossible, that the likelihood of such diseases being transmitted in such a setting was remote, and that none was of a nature to seriously endanger the health of an affected individual. The auditors could not determine the frequency or source of such diseases in Kansas because the State does not require that incidence of infections of this type be reported.

Another important factor in considering the potential for harm to the consumer in the event that violations are not corrected is the severity of the actions needed to correct them. State statutes give the Board a number of enforcement powers. When a violation of law or some other problem is found during an inspection, the inspector can request that it be corrected. If more serious enforcement actions appear to be necessary, the Board can suspend or revoke a license or close an establishment, either temporarily or permanently. In the last five years, the Board has taken no action to close a beauty shop or school or to suspend or revoke any cosmetologist's license.

Survey of licensed cosmetologists. The auditors also surveyed a random sample of 204 out of the more than 17,000 licensed cosmetologists to get their views as to what harm might befall the public in the event of deregulation of the industry. They also wanted to ensure that no problem areas were overlooked. Altogether, about one-fourth of the cosmetologists, or 53 cosmetologists, responded to the survey. (A summary of the survey results is available from Legislative Post Audit upon request.) Of these, 47 indicated they felt some harm would result from deregulation. Their major areas of concern can be summarized as follows:

<u>Potential Harm</u>	<u>Number of Responses</u>
Cosmetologists would be untrained or the public would lose assurance that they are trained	12
Damage to hair or skin	8
The profession would be hurt	8
People would practice in their homes	5
Public would be harmed (unspecified harm)	5
Quality of haircut or style would suffer	4
Shops would not be clean	3
Diseases would be transmitted	2
Total	<u>47</u>

The auditors carefully considered all areas of concern raised by the cosmetologists. The problems listed that could present a potential for harm to the customer are hair or skin damage, unclean shops, and the transmittal of disease. As the previous sections have shown, the auditors could not verify through complaints, inspection results, or through their discussions with public health officials that any serious problems have or could occur from unclean shops or diseases being transmitted.

Regarding damage to the hair or skin (such as hair falling out, scalp burns, an unusual reaction to a hair-coloring solution, and the like), or the misapplication or misuse of chemicals and other beauty products by untrained cosmetologists, the auditors concluded that the harm was not likely to be more serious than any person could bring on themselves by coloring their own hair or by giving themselves or another person a permanent. The chemicals in both store-bought hair care products and those used by cosmetologists are controlled and regulated by the Federal Drug Administration through manufacturers and distributors. If such harm should occur, the public's recourse, as it is now, would be through the courts or through malpractice insurance. Moreover, given the industry's dependence on return business--the cosmetologists surveyed said that about 97 percent of their customers visit their shops occasionally or regularly--beauty shop owners have a vested interest in ensuring that their operators are competent and perform satisfactorily. Dissatisfied customers are unlikely to patronize a beauty shop again or to recommend that others do so.

Taken together, the lack of evidence that any problems are occurring in such a way as to represent a significant potential harm, and the lack of any serious enforcement action on the part of the Board in the past five years led Legislative Post Audit to conclude that the absence of regulation of the practice of cosmetology would not pose a significant harm to the public's health, safety, or welfare.

Does State Regulation Protect the Public's Health, Safety, and Welfare?

The primary purpose of regulation is to protect the public. Studies have shown, however, that regulatory agencies may become sympathetic to --or even dominated by--the industries they regulate. These agencies may create policies and take actions that benefit the industry rather than the public. To address this concern, the Sunset Law calls for Legislative Post Audit to determine whether all facets of the regulatory process are designed solely to protect the public, whether such protection is the primary effect of regulation, and whether there is a reasonable relationship between the State's exercise of its police power in this regulatory activity and the protection of the public.

The auditors reviewed the Board's rules and regulations, statutory requirements, inspection and complaint investigation procedures, examination and licensing activities, and enforcement policies to determine whether these activities served to protect the public. In many areas, they found laws, regulations, and policies pertaining to cosmetology that appear to benefit the industry rather than the public by unnecessarily restricting entry into the field. They also found examples of regulations that, while they do not necessarily benefit the industry, have no relationship to the protection of the public. In these areas, the State's police power in regulating cosmetologists does not appear to be reasonable. The areas in question primarily involve restrictive licensing requirements for shop apprentices, cosmetologists, schools of cosmetology, and out-of-State transfer students and cosmetologists. The auditors also found problems with the lack of training or guidelines for Board inspectors and with the composition of and the lack of adequate public representation on the Board. Each area is discussed separately in the following sections.

Restrictive Licensing Requirements for Shop Apprentices

Kansas law allows cosmetologists to obtain their training either at a school of cosmetology or as an apprentice in a beauty shop. Shop apprentices must serve an 18-month apprenticeship compared with the nine months (1,500 hours) of training received at the schools of cosmetology. To become licensed, both students and shop apprentices must pass a written and

practical examination administered by the Board. Under the Board's regulations, there can be only one apprentice in a shop at a time, and students at a cosmetology school cannot complete their training as shop apprentices. The Board has also adopted a policy setting a maximum limit of five apprentices in Kansas at any one time.

The auditors found that, while the Board's policies and regulations governing shop apprentices may have been adopted with the intent of ensuring that apprentices receive the same type of training as students at cosmetology schools, such regulations serve to discourage apprenticeships. The limit of five apprentices in Kansas at any one time makes the option of serving as a shop apprentice almost nonexistent, thus requiring that virtually all training be obtained at a school of cosmetology. Kansas is one of 22 states that allows shop apprenticeship programs. Nearly all other states allow for more apprentices than Kansas does; the average number of apprentices in these other states is about 150. Thus, the Board's regulations and policies are not designed solely to protect the public, but in fact benefit the cosmetology schools and severely limit the opportunities for people who wish to be trained as cosmetologists.

Restrictive Licensing Requirements for Cosmetologists

To become a licensed cosmetologist in Kansas, an individual must meet several requirements set out by statute or adopted by the Board. These requirements involve a number of steps, as follows:

<u>Steps</u>	<u>Requirements</u>
1. Application for apprenticeship or school	<ul style="list-style-type: none"> --17 years old --high school education (if under 25) --apply to the Board, including name of school or shop where will train and name of instructor --physical examination --certificate of moral character
2. Training	<ul style="list-style-type: none"> --graduation from a licensed school with 1,500 hours, or completion of 18 months as a shop apprentice
3. Written examination	<ul style="list-style-type: none"> --must pass both a national and a State examination after at least 1,000 hours of training
4. Application for licensure	<ul style="list-style-type: none"> --submit two photographs, certificate of moral character, and notarized statement of training --physical examination

- notarized verification of application for licensure by applicant
- 5. Practical examination
 - must pass a demonstration examination graded by Board members after 1,500 hours of training or apprenticeship period

In addition, cosmetologists may obtain a senior cosmetologists license by showing active employment for at least 120 days over a three-year period and by furnishing evidence of participation in 40 hours of continuing education activities.

These requirements show that all facets of the application and licensing process are not designed solely to protect the public. The process contains requirements that at a minimum do not relate to the skills a cosmetologist must have or to protection of the public. At most, some requirements may set up artificial barriers to qualified individuals wanting to enter the field. These requirements are listed below and are discussed in the following sections:

- application, age, education, physical examination, and related requirements
- State written examination requirements
- issuance of a senior cosmetologist license

Application, age, education, physical examination, and related requirements. The auditors compared the Board's requirements in these areas with the requirements in six other states--Colorado, Iowa, Missouri, Nebraska, Oklahoma, and Texas. These other states' requirements varied. Some had similar or more stringent requirements, others required less. For example, Kansas is the only state that requires a high school education for licensure; requirements in other states range from no formal education to two years of high school. Other examples: two states besides Kansas require applicants to be 17 while four have set the minimum age requirement at 16, and only two other states besides Kansas require applicants to submit photographs.

Even though such regulations do exist to varying degrees in surrounding states, Legislative Post Audit could find no rationale for continuing them in Kansas. There appears to be no reason, for example, why application to a school should not be directly between an individual and a school, as it is in most occupations. A certificate of good moral character for cosmetologists appears to be meaningless in regard to protecting the public. Furthermore, the auditors questioned the need for the two physical examinations required by the Board, which test for tuberculosis and venereal diseases. Public health officials they interviewed stated that the physical examination requirement was unjustified because the chance of such diseases being transmitted in the setting of a beauty shop or school was extremely remote.

Based on the auditors' review of these licensing requirements, Legislative Post Audit concluded that the State's exercise of its regulatory authority in these areas was unjustified and unreasonable.

Written examination requirements. The Board administers both a national and a State written examination to students who have completed at least 1,000 hours of training. The "National Cosmetology Test" is developed and scored by a private company and is sponsored by the National Interstate Council of State Boards of Cosmetology. Twenty-eight states besides Kansas use this examination, which tests students over such areas as salon management, sanitation procedures, dermatology, shampoos and rinses, scalp and hair care, coloring, waxing, manicuring, and hair cutting and styling. As part of the written examination, students in Kansas must also pass an examination developed by the Board on Kansas laws and regulations.

Written Examination Requirements

As part of their written examination, cosmetology students must pass an examination on Kansas' laws and regulations. None of these questions pertain to a cosmetologist's proficiency in the trade. The following questions excerpted from that exam show how unnecessary this portion of the written test is in protecting the public.

Question: Cosmetology laws in Kansas are passed by the:

1. State Legislature
2. State Cosmetology Association
3. State Board of Health
4. State Board of Cosmetology

Question: Where should licenses and permits be posted in beauty salons and beauty schools?

- | | |
|---------------------------|----------------|
| 1. In a conspicuous place | 3. Supply room |
| 2. Restroom | 4. In a desk |

Question: Out of the gross receipts received by the Kansas State Board of Cosmetology, the sum paid into the general revenue fund of the state is:

- | | |
|--------|---------|
| 1. 20% | 3. 5% |
| 2. 10% | 4. None |

Question: What education requirements are needed to become an instructor in Kansas?

1. High School graduate or equivalent
2. College graduate
3. Teacher's degree
4. Grade School education

Question: What is the minimum fee for a cosmetologist examination?

- | | |
|------------|------------|
| 1. \$10.00 | 3. \$15.00 |
| 2. \$ 7.00 | 4. \$20.00 |

Fifteen of the 25 questions on this examination pertain to the Board's fee structure and the amount of fees for the various licenses. Other questions include the number of members on the Board, the length of their term of office, who passes laws in Kansas, and the like. None of the questions address a cosmetologist's proficiency or relate to protecting the public from harm.

Issuance of a senior cosmetologist license. Through its regulations, the Board may issue a senior cosmetology license to any licensed cosmetologist who can show active employment for at least 120 days over a three-year period and can furnish evidence of participation in 40 hours of continuing education activities. License fees for senior cosmetologists are \$1 a year higher than for cosmetologists. The Board does not specify what types of activities are acceptable. The auditors reviewed the continuing education courses being attended and found that most were market-oriented courses in hair shaping, styling, and designing put on by cosmetology trade associations and hair care product manufacturers. The Board's Executive Director told the auditors that the senior cosmetology license was offered to promote such courses by manufacturers in Kansas. The license does not allow the cosmetologist to do anything more than a licensed cosmetologist can do; it appears to be a prestige certificate with no relationship to the protection of the public. Because State regulation is not intended to promote the industry or to provide incentives for improving techniques in hair styling, the Board's issuance of this type of license does not appear to be a proper exercise of the State's police power in regulating cosmetologists.

Restrictive Licensing Requirements for Schools of Cosmetology

To open and operate a school of cosmetology, an individual must meet a number of requirements set by Kansas law. These requirements include submitting a financial statement to the Board along with such information as the school's floor plan and dimensions (Board regulations require a minimum of 3,500 square feet of floor space), proposed curriculum, instructors' qualifications, tuition and price list, a guarantee of 25 student applications, and a \$100 new school license fee.

In comparing these requirements with other states' requirements, the auditors found that the square footage requirement may be excessive. Only five other states require the same or more square footage as Kansas; 7 have no square footage requirements, and 38 require less--as few as 150 square feet. Auditors also compared the Board's regulations with the accreditation standards of the Cosmetology Accrediting Commission. The Commission is recognized by the U.S. Office of Education as the national accrediting agency for private cosmetology schools. Although the Commission's standards cover the same general areas, they do not place a square footage requirement on applicants, specifying only that the curriculum and facilities

be sufficient and adequate. According to Board records, the Board has not denied a school license application for the past five years; however, one application was withdrawn when the applicant realized he could not meet the minimum square footage requirements.

Once schools are in operation, they are prohibited by law from advertising in any way the prices charged for services offered to the public. Board regulations also allow schools to offer only one scholarship per twenty students. The auditors judged that the restriction on the number of scholarships may arbitrarily restrict entry into the profession, and that the prohibition on advertising serves only to protect established beauty shops because prices are generally lower at schools than at area shops.

Restrictive Licensing Requirements for Out-of-State Transfer Students and Cosmetologists

The Board of Cosmetology has adopted regulations stating that cosmetology students transferring from out-of-State "should be given credit for approximately two-thirds of the time spent in each subject, the total number of hours not to exceed the amount prescribed by the Kansas requirements." As a result of this regulation, students automatically lose one-third of the hours they have already completed in other states. In fiscal year 1979, eight transfer students lost an average of 300 hours of training each, ranging from 146 hours to 500 hours.

The auditors could not determine why this regulation was necessary to protect the public. Schools in all states are supervised and licensed or accredited by various state agencies and many, as in Kansas, are also accredited by the Cosmetology Accrediting Commission. Consequently, Legislative Post Audit concluded that it is unreasonable for students automatically to lose hours and that the regulation places excessive requirements on out-of-State transfer students.

Licensed cosmetologists from out of State who have been practicing for more than one year are automatically granted a license by the Board. However, regulations state that those who have been practicing less than one year, even though they are licensed and have met all requirements in other states, must take the practical demonstration examination and if their training requirements were less must complete a total of 1,500 hours. Currently, 11 states require fewer than 1,500 hours. The Board has gone even beyond the intent of State regulations in its letter informing licensed out-of-State cosmetologists of the schooling requirements. The Board's letter states that these individuals must make up any hour difference at a Kansas school of cosmetology; K.A.R. 69-2-1 does not require that those hours be obtained in Kansas.

In the past five years, the Board has received out-of-State applications from 990 licensed cosmetologists. Nearly 60 percent of these (598 cos

metologists) had been practicing more than one year and were automatically granted a license. The remaining 392 were required to take the practical demonstration examination graded by the Board. The auditors examined a sample of 16 of the 392 applications and found that two of these 16 applicants were required to attend a Kansas school before becoming eligible to be licensed in Kansas.

The Board's regulations in this area place excessively restrictive requirements on out-of-State cosmetologists and appear to be unnecessary in ensuring that only qualified individuals are allowed to practice in Kansas. Furthermore, the Board's letter requiring these individuals to attend a Kansas school is not in line with State regulations and is a restraint of trade that apparently benefits cosmetology schools in Kansas.

Inspections Conducted by the Board

One major purpose of the Board is inspecting shops and schools to ensure that they comply with laws, rules, and regulations pertaining to sanitation and safety. These inspections are carried out by three inspectors, all of whom must be licensed cosmetologists. The law permits but does not require the Board to inspect all shops and schools; however, the Board has adopted an informal policy of inspecting all shops at least once a year and all schools at least four times per year. In fiscal year 1979, Board inspectors completed 2,711 inspections of the 3,889 licensed beauty shops, and 63 inspections of the 29 licensed cosmetology schools. Thus, the Board is not meeting its inspection goals. Because the Board has no timetable or schedule for inspections--these are set by the inspectors themselves--it has no way of ensuring that shops and schools will be inspected as often as called for.

The auditors also found that the Board's inspectors are not required to have formal training in public health areas such as sanitation, safety, and disease control. Nor are they given any formal guidelines to follow in identifying violations or in specifying the amount of time that should be allowed for particular violations to be corrected. As a result, inspectors have a great deal of discretion in identifying violations of law and in specifying corrective measures. For example, in fiscal year 1979 one inspector cited problems with generally unclean shops in 17 beauty shops, giving the owner from one to five days to rectify the problems. Another inspector identified only one shop as having problems with general uncleanliness, and gave the owner 10 days to clean up the shop. The fact that inspectors are not trained and have no formal guidelines suggests that shops are not judged by the same standards. The value of the Board's inspections in protecting the public is therefore suspect.

Composition of the Board

The Board of Cosmetology comprises five members; four members must be licensed cosmetologists, while the other cannot hold any license

issued by the Board and represents the general public interest. The law imposes certain restrictions on Board members--they may not be manufacturers, wholesalers, or retailers of cosmetology equipment or cosmetics, and no more than three members can be from the same political party. However, the law does not preclude Board members from also serving as officers of cosmetology occupational associations. The most recent Board appointee is currently the president of the Kansas Chapter of the National Hairdressers and Cosmetology Association. Another Board member is currently the president of the Kansas Cosmetology School Association.

The auditors' review of Board minutes revealed an uncomfortably close relationship between the Board's actions and the wishes of the industry. In two instances, the auditors found evidence that the President of the Kansas Cosmetology Association acted to second Board motions even though the Association's President was not a member of the Board at the time. In one instance, he seconded a Board motion requiring any student who stayed in school longer than the nine-month training period to pay a fee to the Board and apply for an additional training license. In the other, the Association's President seconded the adoption of approximately 30 revised regulations pertaining to beauty shops. Both motions were subsequently unanimously adopted by the Board.

Although these two instances do not necessarily indicate that the Association's President was attempting to sway Board members' opinions or to alter regulations to benefit the industry, they do indicate that the opportunity to do so may exist. At a minimum, the President's action was a violation of the accepted procedures for Board meetings.

The fact that officers of cosmetology associations can be members of the Board and that such officers have close ties to the Board even when they are not members raises a serious question of potential conflict of interest: Can Board members who are also officers of related occupational associations objectively promote the public interest in the event of a conflict between the public interest and the regulated interests? In addition, the fact that there is only one public representative on the Board seems an imbalance of the interests of the public and the industry. The Board is dominated by representation of the industry. The public may be better served to have more direct representation on the Board, such as a minimum of two public members.

Is Regulation Worth Its Cost?

To assess whether the benefits of regulation justify its costs, the Kansas Sunset Law calls for analyses in two areas: a determination of the degree to which regulation increases the cost of goods and services, and a determination of whether the increased cost is more harmful than an

absence of regulation. To address these areas, the auditors first identified costs that could be most directly related to the activities of regulation. The most direct administrative costs are license fees.

The operations of the Board are supported entirely by fees collected for examinations, licenses, and license renewals. During fiscal year 1979, these fee receipts totaled \$190,256. As the following figures show, the major license fees range from \$5 for transferring ownership of a beauty shop to \$100 for a new school license.

<u>Type of License</u>	<u>License Fee</u>
Student or apprentice	\$ 6
Cosmetologist examination permit (out-of-State applicants)	15 25
Cosmetologists renewal	7
Senior cosmetologist (three-year license)	24
New school of cosmetology	100
School renewal	25
New beauty shop	20
Beauty shop renewal	10
Beauty shop change of ownership	20
Beauty shop transfer of ownership	5

To determine whether these charges had a significant impact on the cost of services to consumers, the auditors attempted to compare the total of \$190,256 with the industry's total volume of business. However, the only information available was from the Department of Economic Development for 1977, which showed that the total 1977 payroll from beauty shops was nearly \$18 million. This figure excludes the volume of business in beauty schools and the profits and salaries for beauty shop owners. Although the \$18 million figure is likely to be extremely low, it was the only figure available for comparison purposes. The \$190,256 in fees collected in 1979 to regulate the industry represent approximately 1.0 percent of this amount. Consequently, direct administrative costs do not appear to significantly affect the cost of goods and services to the public.

Auditors also looked at the licensing requirements for a cosmetologist and found that tuition at a school of cosmetology imposes indirect administrative costs. The cost for the required 1,500 hours of training varies among the schools in the State, ranging from approximately \$300 at several of the public schools to \$1,950 at one of the private schools. Because students have the choice of attending a public school, where the tuition is lower, tuition does not appear to impose an unreasonable cost for providing training.

Assessing other, more indirect costs--such as the cost of maintaining clean shops and restrooms, covering trash cans and hampers, sterilizing equipment and supplies--is more difficult. Many beauty shops would adhere

to these standards voluntarily as a matter of good business practices. If some shops or schools adhere to such standards only because they know they are required to do so and will be inspected, the related costs add at most only a few cents to the public's costs.

In their survey of licensed cosmetologists, the auditors asked several questions concerning the effect of Kansas laws and regulations on the costs associated with regulation. The majority of the cosmetologists responding said they felt costs do not discourage individuals from seeking a license. They also said that the requirements did not increase their cost of practicing--90 percent said that if requirements were repealed their costs would not be significantly reduced.

These findings led Legislative Post Audit to conclude that the costs associated with regulating the practice of cosmetology do not significantly increase the public's costs for goods and services. However, because the potential for harm in the absence of regulation is not significant, any costs transmitted to the public because of regulation may be unwarranted.

Alternative Methods of Regulation

One of the requirements of the Kansas Sunset Law is to determine whether there are alternatives for regulating the practice of cosmetology that are less restrictive but still effective in protecting the public from any significant harm.

As discussed in previous sections of this chapter, the auditors' review of complaints and investigations and their conversations with public health officials provided no evidence that the public was being significantly harmed by cosmetologists or would be harmed in the absence of regulation. The sections also pointed out a number of areas where regulation by the Board either appeared to restrict entry into or competition in the practice, thereby benefitting the industry, or did not have the effect of protecting the public because they had no bearing on the skills needed to become a cosmetologist.

Because they found no demonstrable harm of a serious nature occurring in the industry, the auditors examined the possibility of eliminating regulation provided by the Board. They also examined the possibility of retaining the Board but eliminating those areas of regulation that do not protect the public or that appear to benefit the industry. Finally, they examined the possibility of consolidating the Board of Cosmetology with the Board of Barber Examiners. Each alternative is discussed below.

Eliminating the Board

If regulation provided by the Board were eliminated, some regulation would nonetheless continue. The public beauty schools in Kansas are now responsible to the Department of Education as well as the Board. Should the

Board be abolished, the private beauty schools would also fall under the Department's jurisdiction pursuant to the Proprietary Schools Act. The Food and Drug Administration would also continue to regulate the chemicals and products used in the practice of cosmetology. No systematic inspections would be conducted at beauty shops, but nearly half the cosmetologists surveyed by the auditors indicated their shops had been inspected by local fire officials, local or State health officials, or private insurance companies (about half the cosmetologists said they were covered by malpractice insurance). These inspections are admittedly spotty; regularly scheduled inspections could, if necessary, be conducted by the Department of Health and Environment.

If the Board were abolished, complaints regarding public health matters (unsanitary shops, equipment, or supplies) could be addressed to local health officials, the Department of Health and Environment, or the State Fire Marshal's Office. Complaints or grievances alleging incompetence or harm could be handled through the Consumer Protection Division of the Attorney General's Office. For any damage or harm that could occur, the public's recourse, as it is now, would be through the courts or through the malpractice insurance of those cosmetologists who carry it.

Finally, without the Board, cosmetology school requirements regarding the number of courses taught, the number of hours, instructor's qualifications, and the like would be established by the Department of Education, presumably along the same lines they are now established. One-time certification that an individual had successfully completed the required courses and hours at an approved cosmetology school could also be provided by the Department. This certification would ease any problems cosmetologists may have in transferring to other states to practice or in obtaining malpractice insurance, either for themselves or for their shops. In addition, some private schools would continue to be inspected and accredited by the Cosmetology Accrediting Commission.

Thus, although some form of regulation or supervision would continue, that regulation or supervision could be provided without the Board and would be less restrictive than the regulatory activities now provided by the Board.

Retaining the Board

The auditors examined the possibility of retaining the Board and its major functions in the areas of inspections, training, licensing, handling complaints, and enforcing laws and regulations pertaining to the practice of cosmetology. If the Board were re-established, Legislative Post Audit concluded that the laws, regulations, and policies that benefit the industry or that do not serve to protect the public should be reviewed and revised. These areas would include the following:

- amending Board policies regarding apprenticeships to allow more (or an unlimited number) of apprentices to train in Kansas and to allow more than one apprentice in a beauty shop at a time
- eliminating current requirements for age, education, physical examinations, statements of good moral character, and the like that do not serve to protect the public, that may restrict entry, or that have no bearing on the qualifications necessary to practice cosmetology
- revising regulations for out-of-State transfer students to permit them to receive full credit (rather than two-thirds credit) for hours they have completed in approved out-of-State schools of cosmetology
- ensuring that the letter informing out-of-State cosmetologists of Kansas' schooling requirements does not require that those hours be obtained in Kansas
- revising or eliminating the square footage requirement (currently a minimum of 3,500 square feet of floor space) for schools of cosmetology
- reviewing the appropriateness of allowing schools to offer only one scholarship per 20 students
- permitting schools to advertise their prices to the general public
- eliminating the State portion of the written examination, which questions cosmetology students over the amount of license fees, the number of Board members, and similar questions that have no bearing on a cosmetologist's proficiency in the trade
- eliminating the senior cosmetologist license
- establishing timetables or schedules for inspections of beauty shops to help ensure that each shop is inspected at least once a year, as called for in the Board's policies
- providing formal guidelines and training for Board inspectors

In addition, to ensure better public representation, the laws should be changed to prohibit members of the Board from being officers in cosmetology occupational associations, and to place at least two representatives of the general public on the Board.

Consolidation With the Board of Barber Examiners

The auditors' review of the functions of the Board of Cosmetology and the Board of Barber Examiners showed a strong argument for consolidating the two boards if the State continues to regulate both.

In all regulatory areas, the statutory responsibilities, duties, and purpose of regulation of the Board of Cosmetology and the Board of Barber

Examiners are similar, if not identical. Individual licensing requirements for the two occupations vary, but both boards examine and license practitioners, renew licenses, license and inspect schools and shops, handle complaints from the public, and have the authority to discipline practitioners and close shops.

In addition, recent changes in the public's view toward hair styling have brought the practices of barbering and cosmetology closer together; both barbers and cosmetologists often operate out of the same shop, working on either men or women. In Topeka alone, 24 of the 56 barber shops are listed in the yellow pages of the telephone directory under the listing for beauty shops. In Wichita, the number is less; 19 of 112 barber shops are also under the beauty shop listing. According to the Board of Barber Examiners, 12 of the 24 shops in Topeka and 11 of the 19 shops in Wichita are not licensed barber shops. These are beauty shops that evidently felt it necessary to advertise their services to barber shop clientele as well.

There are other strong arguments for consolidating the two boards. Although no formal records regarding duplicate inspections are kept by either board, the auditors found that some duplication exists. For example, barber inspectors will sometimes note (although not systematically) on an inspection form that a cosmetologist is working in a barber shop; barber inspection reports for fiscal year 1979 showed that 127 cosmetologists were working in the 950 barber shops across Kansas. In addition, according to administrative regulations, any licensed barber shop employing a licensed cosmetologist must also be inspected by the Board of Cosmetology and licensed as a cosmetology shop. The reverse is true for cosmetology shops employing barbers as well, although this is a matter of policy rather than regulation. Consolidating the two boards would mean that only one inspection would need to be conducted at shops in which both barbers and cosmetologists worked, thus helping to eliminate duplication and reduce travel costs. Other advantages of consolidating the two boards would include increased administrative efficiency in processing licenses and conducting examinations.

Finally, in the surveys conducted by Legislative Post Audit, both barbers and cosmetologists were asked if the two boards could be consolidated without causing harm to the public. Cosmetologists were more receptive to the idea of consolidation--62 percent of the cosmetologists responding to the survey agreed that the boards could be combined. Forty-two percent of the barbers responding to the survey agreed the two boards could be combined without causing harm to the public.

If consolidation were to take place, a five-to-seven member Board could be established, with up to three members representing the general public. Further, the laws, regulations, and policies that benefit the industry or that do not protect the public, as discussed in the preceding section, should still be reviewed and revised.

Conclusion

For the following reasons, there does not appear to be a need for the Board of Cosmetology to regulate the practice of cosmetology:

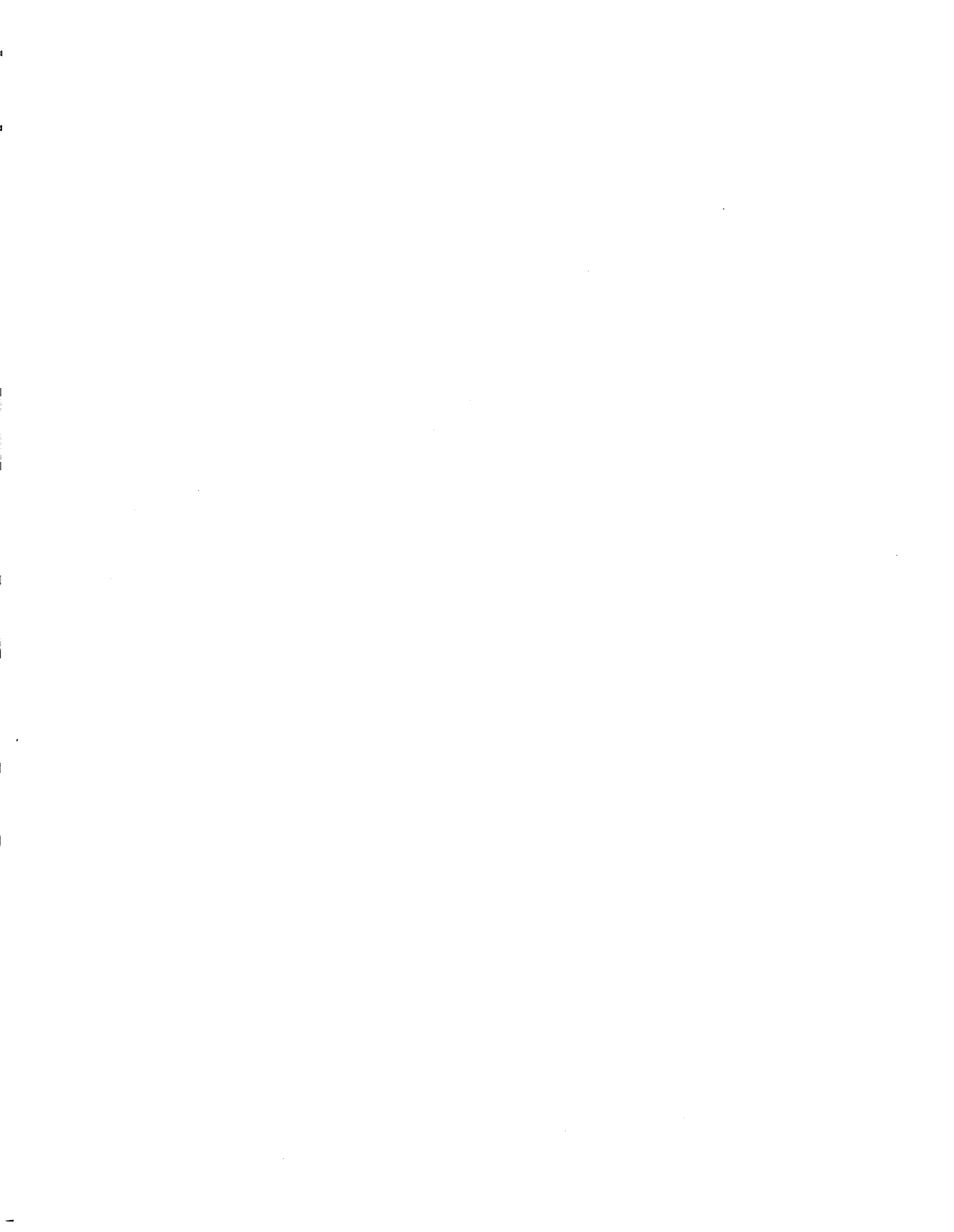
1. Potential for harm in the absence of regulation. The types of complaints being filed and violations being uncovered during Board inspections provide no evidence that significant harm to the public has occurred. Public health officials contacted by the auditors said there was little, if any, chance of diseases being transmitted in case of unclean shops or supplies. Furthermore, given beauty shop owners' vested interest in the competency of their operators because of their dependence on return business, there is no reason to believe that problems will worsen or increase.
2. Protection of the Public. Some aspects of the Board's regulation appear to benefit the industry rather than the public, and others have no relationship to protecting the public or ensuring that cosmetologists are qualified. The major areas include artificially limiting the number of apprentices allowed in Kansas; placing apparently unwarranted restrictions on those wanting to enter the field regarding such things as age, education, and physical and written examinations; restricting cosmetology schools from advertising their prices; automatically denying credit hours earned for out-of-State transfer students; and requiring licensed cosmetologists from out-of-State to pass the practical examination and take more hours of schooling. These and other aspects of the regulatory activity that do not have protection of the public as their primary effect appear to be an unjustified exercise of the State's police power.
3. Costs. Although the costs of regulation do not appear to significantly increase the costs of services to the public, any costs being transmitted may be unwarranted in view of the insignificant potential for harm without regulation.
4. Alternative methods of regulation. If the Board were eliminated, schools of cosmetology would by law be supervised and approved by the Department of Education and chemicals used in beauty products would be regulated by the federal government. The need for one-time certification of training at an approved cosmetology school may

exist so that cosmetologists can transfer to other states and obtain malpractice insurance. However, this certification can be provided by the Department of Education; a Board does not appear to be necessary. Auditors also examined the possibility of retaining the Board but revising or eliminating aspects of regulation that benefit the industry or do not protect the public or ensure competency, and of consolidating the Board of Cosmetology with the Board of Barber Examiners. If the Board is not abolished, Legislative Post Audit concluded it should be consolidated with the Board of Barber Examiners.

Recommendations

1. The Legislature should take no action to re-establish the Board of Cosmetology and its regulatory function over the practice of cosmetology.
2. In abolishing the Board, the Legislature may want to consider introducing legislation to do the following:
 - a. establish minimum training requirements that individuals must meet before becoming practicing cosmetologists
 - b. provide for one-time certification by the Department of Education that schooling or apprenticeship requirements have been met
3. Although Legislative Post Audit recommends that the Legislature not re-establish the Board of Cosmetology, if the Board is re-established, Legislative Post Audit recommends that at a minimum the Board be consolidated with the Board of Barber Examiners. A new five-to-seven member Board should be created to regulate the practices of barbering and cosmetology, with up to three members representing the general public interest. In consolidating the two boards, the Legislature should also ensure that the following changes are made in the regulation of cosmetologists:
 - a. Amending Board policies regarding apprenticeships to allow more (or an unlimited number) of apprentices to train in Kansas and to allow more than one apprentice in a beauty shop at a time.

- b. Eliminating current requirements for age, education, physical examinations, statements of good moral character, and the like that do not serve to protect the public, that may restrict entry, or that have no bearing on the qualifications necessary to practice cosmetology.
- c. Revising regulations for out-of-State transfer students to permit them to receive full credit (rather than two-thirds credit) for hours they have completed in approved out-of-State schools of cosmetology.
- d. Ensuring that the letter informing out-of-State cosmetologists of Kansas' schooling requirements does not require that those hours be obtained in Kansas.
- e. Revising or eliminating the square footage requirement (currently a minimum of 3,500 square feet of floor space) for schools of cosmetology
- f. Reviewing the appropriateness of allowing schools to offer only one scholarship per 20 students.
- g. Permitting schools to advertise their prices to the general public.
- h. Eliminating the State portion of the written examination, which questions cosmetology students over the amount of license fees, the number of Board members, and similar questions that have no bearing on a cosmetologist's proficiency in the trade.
- i. Eliminating the senior cosmetologist license.
- j. Establishing timetables or schedules for inspections of beauty shops to help ensure that each shop is inspected at least once a year, as called for in the Board's policies.
- k. Providing formal guidelines and training for Board inspectors.
- l. Prohibiting members of the newly-created Board from being officers in cosmetology occupational associations.



APPENDIX A

TESTS AND ANALYSES USED TO MAKE A DETERMINATION OF THE SUNSET PERFORMANCE FACTORS

Sunset Factor 1

Whether the absence of regulation by the State agency or office would significantly harm or endanger the public health, safety, or welfare.

Test and Analyses

- Determine the number of persons or entities directly regulated by the agency and any significant changes in this number over time.
- Determine the number of complaints filed over time against those individuals or entities which are regulated.
- Relate the number of complaints to the population of the State, users of the service, and number of licensees to determine the magnitude of any problems.
- Determine if the users of services lack the knowledge necessary to evaluate the qualification of those offering services.
- Determine if a high degree of independent judgment is required of practitioners; and how much skill and experience is required in making these judgments.
- Determine the harm to the public which might occur if complaints filed with the agency were not resolved.
- Determine the "value" to the public of the agency's enforcement and licensing functions.
- Determine the harm to the public prior to State regulation or in states without regulation.

Sunset Factor 2

Whether all facets of the regulatory process are designed solely for the purpose of the protection of the public and have such protection as a primary effect.

Tests and Analyses

- Determine the composition of all advisory boards to ensure general public representation.
- Document what the agency has done to encourage public input into the regulatory process.
- Determine if controls are sufficient to prevent unauthorized individuals or entities from operating in the State.
- Review regulation procedures, tests, and qualifications to determine if they are relevant and valid criteria for evaluating applicants desiring to provide services covered by regulation.
- Determine the frequency of and reasons for complaints made by the public against those entities or individuals regulated by the agency. A high level of complaints might indicate that unqualified individuals are allowed to become certified to provide the regulated services.
- Review enforcement procedures utilized by the agency to determine if there is a follow-up and resolution of complaints.
- Determine the types of disciplinary action taken against those individuals and companies whom complaints have been filed against.
- Determine the extent to which the agency has recommended statutory changes to the Legislature which would benefit the public as opposed to the persons regulated.
- Determine if the agency has taken all actions necessary to protect the public.

Sunset Factor 3

Whether there is a reasonable relationship between the exercise of the police power of the State by the State agency or office and the protection of the public health, safety, or welfare.

Tests and Analyses

- Based on audit findings concerning harm that would result without regulation and alternative methods of regulation, determine whether the regulation is reasonable or unnecessarily restrictive.

- Determine the reason for refusals of applications for licensing; determine if the refusals are based on valid criteria.
- Review complaints made by those regulated which might indicate that the standards or criteria used in the regulatory process are invalid or unjustified.
- Determine if there are any artificial barriers to entry such as:
 - a) excessive fees
 - b) unreasonable age, education, or residency requirements
 - c) unnecessary apprenticeships

Sunset Factor 4

Whether the regulation by the State agency or office has the effect of directly or indirectly increasing the cost of any goods or services involved, and, if so, to what degree.

Tests and Analyses

- Determine the costs to those regulated (i.e., license fees, testing fees, taxes, etc.).
- Determine the indirect costs to those regulated (i.e., training requirements, meetings, tests, paperwork-records, etc.).
- Compare the total costs of regulation to the total dollar volume of business done and/or the total cost of doing business by those regulated to determine if the cost of regulation is significant enough to increase the price charged for goods or services.
- Determine the degree to which the regulation restricts the supply of practitioners, thereby increasing the costs of goods or services.
- Determine if a less restrictive method of regulation would decrease the costs of goods and services.
- Determine if the agency restricts competition by prohibiting or restricting advertising.

Sunset Factor 5

Whether the increase in cost is more harmful to the public than the harm which could result from the absence of regulation by the State agency or office.

Tests and Analyses

- Compare the "value" of complaints resolved by the agency and the "value" of other regulatory activities with any costs due to regulation to determine whether the protection provided by regulation is greater than or equal to the cost of regulation. Consideration should be given to non-quantitative factors such as:
 - a. the deterrent effect of regulation
 - b. the effect of regulation on the competency of practitioners

Sunset Factor 6

Whether there is another less restrictive method of regulation available which could adequately protect the public.

Tests and Analyses

- Compare the regulatory activity in Kansas with that of other states.
- Determine if there is another agency or body which is already providing regulatory services or can adequately provide the same regulatory services.
- Determine if the following laws or standards could adequately protect the public without the agency:
 - a. unfair and deceptive trade practice laws
 - b. civil remedies such as injunctions and cease and desist orders
 - c. criminal laws such as prohibitions against false pretense, deceptive advertising, and cheating
 - d. standards such as construction codes or product safety standards

Performance Audit Factor 1

Whether any State agency is carrying out only those activities or programs authorized by the Legislature.

Tests and Analyses

- Determine the intent of the Legislature in creating the agency and the functions to be performed by the agency in accordance with that intent.

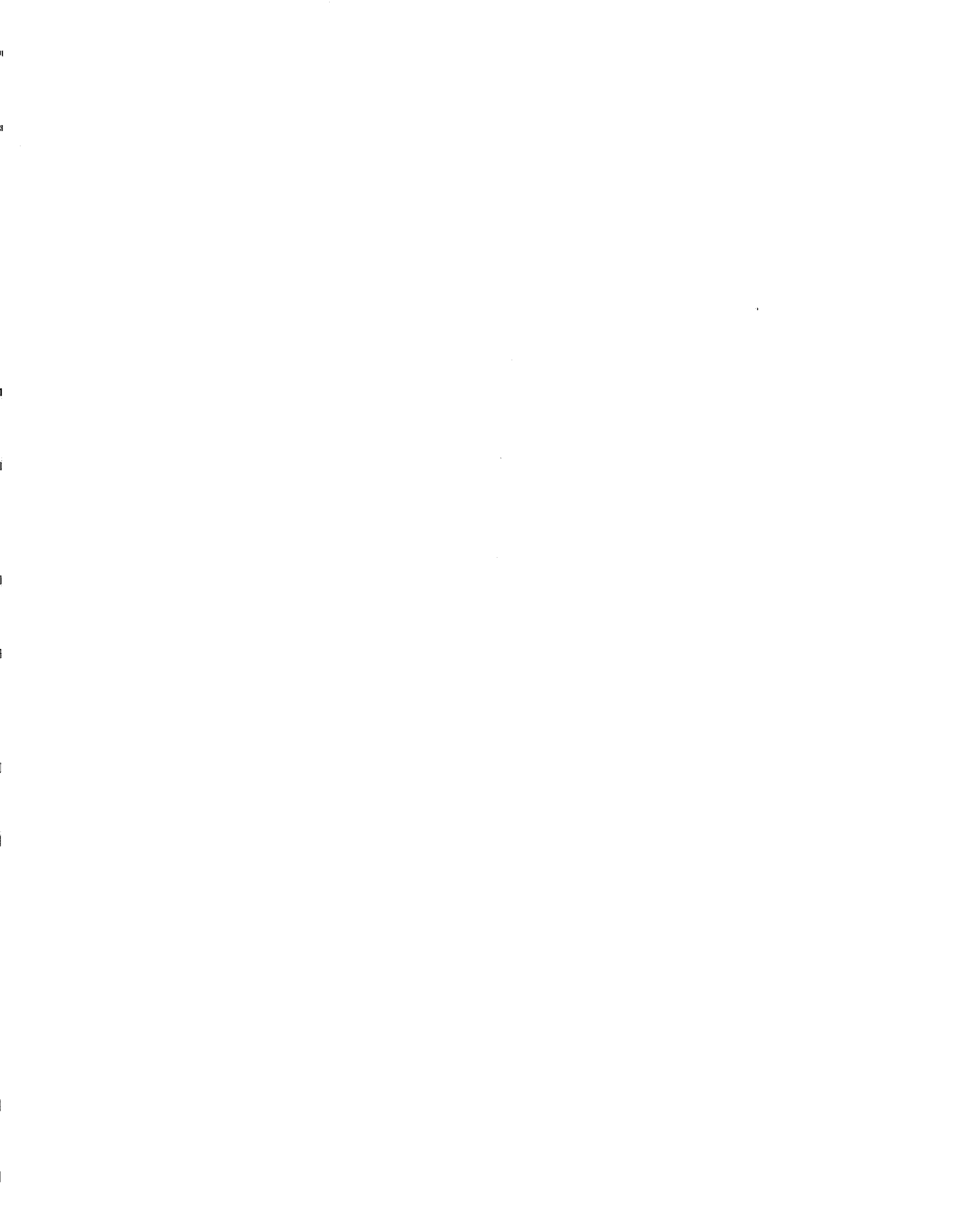
- Review statutes, regulations, legislative committee minutes, legislative studies, Attorney General opinions, and court decisions relevant to the agencies.
- Analyze the information to determine:
 - a. what circumstance or need led to the creation of the agency.
 - b. what functions the agency was originally created to perform.
 - c. how and why the agency's functions have changed over time due to statutory changes, legal opinions, etc.
- Compare current agency programs and activities to those authorized by the Legislature.
- Note any discrepancies between the activities performed by the agency and the activities authorized by the Legislature, and determine what changes need to be made to bring all programs and activities into compliance with Legislative intent.

Performance Audit Factor 2

Whether the programs and activities of a State agency, or a particular program of activity, are being efficiently and effectively operated.

Tests and Analyses

- Evaluate the agency's expenditures for regulation.
- Compare the agency's expenditures by activity over several years to determine if costs have increased for the various aspects of regulatory activity.
- Compare agency regulatory expenditures to those in other states with similar programs.
- Review application and complaint files to determine:
 - a. if applications are being processed on a timely basis
 - b. if complaints are processed and resolved within a reasonable time span
- Review agency operations for:
 - a. duplication of efforts or activities
 - b. wasteful practices (for example, underutilized equipment or personnel)



APPENDIX B

**Board Members and Management Responsibilities
Board of Barber Examiners**

<u>Members</u>	<u>Status as of June 30, 1979</u>	<u>Status as of June 30, 1980</u>
Ken Garrison	Member	Member
U. Stanley Head	Member	Member
H.D. Lippincott	Chairman and Executive Director	Chairman and Executive Director

APPENDIX C

**Board Members and Management Responsibilities
State Board of Cosmetology**

<u>Members</u>	<u>Status as of June 30, 1979</u>	<u>Status as of June 30, 1980</u>
Gary L. Main	Chairperson	--
Eula Osborn	Member	Member
Shirley Wieck	Member	Member
Joyce Franklin	Member	Chairperson
Myra Gross	Member	Member
Sandra Rush	--	Member

Executive Director

Henri Fournier, appointed by the Board on March 15, 1971.

APPENDIX D

Agency Responses



STATE BOARD OF BARBER EXAMINERS

H. D. LIPPINCOTT, *Administrative Officer*

109 West 9th Street, Room 518

Phone (913) 296-2211

TOPEKA 66612

July 15, 1980

Mr. Richard E. Brown
Legislative Post Auditor
Third Floor, Mills Building
Topeka, Kansas 66612

Dear Mr. Brown:

We are in receipt of the draft of the sunset audit relative to the Board of Barber Examiners.

Obviously, your report has tremendous impact and bearing on those directly affected--including our Board, the several thousand members of our profession, and we believe, the general public.

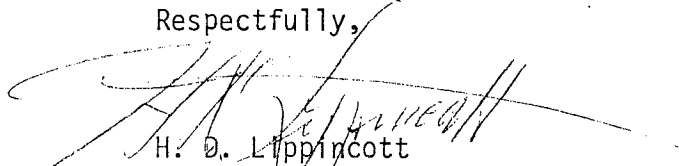
We are appreciative of the work hours involved in the compilation of your report. We are also cognizant however, of the difficulties which are associated with trying to become familiar and knowledgeable with a profession unrelated to one's background and training. This is certainly true when the time frame is relatively short, and creates a situation which can lead to confusion and misunderstanding.

With all due respect, it is our feeling that such is the case in this instance. It is our belief that the report is not an accurate reflection, in many respects, of the importance of existing laws and of the important role which our Board plays.

It is our desire to give your report the serious attention it deserves. It was impossible for us to do so in advance because we had no way of anticipating the nature or scope of your recommendations or conclusions. Accordingly, we intend to develop our response in as complete and thorough a fashion as possible. There is no realistic way for us to accomplish this in the short period of time allotted, although certain errors have been orally communicated to you.

At this point, then, what we can do is state that we are certainly not in accord with your conclusions or your recommendations, and we do not believe the same are warranted by the facts. Consequently, we reject and disagree with the same.

Respectfully,



H. D. Lippincott
Administrative Officer
KANSAS BOARD OF BARBER EXAMINERS

HDL:rw

KANSAS STATE BOARD OF COSMETOLOGY

630 KANSAS AVENUE
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SUNSET AUDIT REPORT

KANSAS STATE BOARD OF COSMETOLOGY

The Board of Cosmetology would like to make the following comments in regard to the Sunset Audit Report.

Legislative Post Audit response: The Board of Cosmetology submitted two responses to the sunset audit. The Board's first response was submitted on July 16, 1980. At that time, a Board member requested that the Board be allowed to submit a revised response so that comments from Board members who were unable to include their comments in the first response because of time constraints would be included in the response. The revised response was submitted on July 25, 1980 and was substantially identical to the original except that it contained comments recommending that the shop apprenticeship program be abolished, and supported retaining age and high school education requirements for licensing and the 3,500 square footage requirement for schools of cosmetology. In addition, the response included the specific comments of one Board member. The complete text of the Board's revised response is contained on the following pages.

Complaints.....Page 28

The number of complaints as recorded in this report is only a partial list. These that are listed are one category of complaints only. Many of the routine checks show a minor infraction written up by the inspector where they gave a "U" for Unsatisfactory. These are not counted individually. Each routine check covers an inspection for wet and dry sterilizers and a check for sterilized combs, brushes and instruments to see if they are sanitary. This is what protects the general public. When these infractions are found, the inspector has them corrected at the time she is there. This type of violation is not on record as they are filed with the inspections and not the complaints.

The mention of the outbreak of lice on page 28, is something that happens every year or two and our inspectors make additional calls at shops at this time. We have a file that shows our inspector called at every shop in the Emporia area and advised them of the outbreak and the proper way to handle treatment or referral. This particular file of miscellaneous reports was never thought of to give to the auditor for reference. We have so many different areas to cover and our work load is so heavy, with our small office staff we probably do not have a filing system as complete as we would if we had more time to spend in consolidation and organization, however I feel that our staff does exceptionally well with all of the work this office has to handle.

Legislative Post Audit response: The auditors reviewed both complaints filed with the Board and inspections conducted by the Board. The "complaints" referred to in the Board's response are actually the violations found by the Board during inspections rather than complaints. These violations are discussed on pages 29 and 30 of the audit report.

Inspections.....Page 30

One type of violation not mentioned in the report is the violation of food in beauty shops and the problem of some having cooking facilities. These violations are encountered regularly. For sanitation, this can not be allowed. This is certainly one regulation that was set up for the protection and welfare of the public.

Legislative Post Audit response: The auditors reviewed all 2,711 inspection reports completed in fiscal year 1979. The violations noted on these reports are summarized on page 30 of the report. None of the violations noted on the inspection reports involved food in beauty shops or cooking facilities.

The statement in regard to this board not closing a beauty shop in the last 5 years is a "plus" for this board, not a "minus". A shop being closed is a disservice to the public. Our job is not to close a shop. When a violation is found, they are required to clean or make the correction. The inspector then re-checks the shop and allows them to remain open after the correction is made.

Legislative Post Audit response: Legislative Post Audit did not conclude that not closing a shop was a "minus" for the Board. The report points out that no problems had occurred over the last five years that the Board considered serious enough to warrant closing a shop, either temporarily or permanently, even though the Board has the authority to do so.

Regulations for Public's Health, Safety and Welfare.....Page 32

Almost every regulation affects the welfare of the public. Each step of our laws, rules and regulations are to provide for their health, well being, safety and welfare. We act as a "go-between" for the patron and the shop owner when necessary, which is not too frequent, because most people are satisfied with their shops.

The other point that should be considered here is the approximately 4,000 licensed shops and many of these owners are not licensed cosmetologists, and the approximately 16,000 licensed cosmetologists, are the general public also! Their welfare must also be considered.

Shop Apprentices.....Page 32

Our program as adopted by the board allows only five to train in the state at one time. Due to the lack of inspectors to check periodically, this stipulation was put into effect. A qualified instructor needs to be with the student apprentice at all times because if left unattended, it could be potentially dangerous to the public. A number of chemicals in the hands of an untrained individual could cause damage to the skin, hair, eyes and the general health of the recipients. The program allowing shop apprentices was put into effect when students had a long distance to attend school. The increase of cosmetology schools (29 at the present time) has made attendance at a school of cosmetology much more feasible.

The shop owner that tries to instruct the cosmetology course and also run her shop business usually has a problem. Our records show that unless a shop apprentice is very proficient and able to study on their own, they have a more difficult time in passing our written test and the oral and demonstration portion of the examination. The restriction of this type of apprenticeship we felt was a benefit to the public because the student that attended a school obtained a full education in the cosmetology field by qualified instructors.

Rather than to train more shop apprentices as the report suggests, it is the board's opinion that to properly serve the public, this program should be abolished.

Legislative Post Audit response: Legislative Post Audit disagrees that the shop apprenticeship program should be abolished, if the licensing of cosmetologists continues. Twenty-one other states provide for a shop apprenticeship as an alternative way of becoming licensed. The number of apprentices in these states--an average of 150--indicates that many individuals find this a more feasible alternative for becoming licensed than attending a school of cosmetology. Abolishing the apprenticeship program could potentially restrict entry into the occupation by denying such individuals in Kansas this opportunity for an alternative way to receiving training.

Restrictive Licensing Requirements for Cosmetologists.....Page 33 and 34 (App. age etc.)

Some of these regulations in regard to requirements for apprentices entering school are being proposed for change in the present changing of our rules and regulations. They are being prepared at this time so can not be presented, however changes are hoped to be made in: Only one physical examination and this one to be obtained at the time they enter school, deleting the moral character certificate and the two photos.

Legislative Post Audit response: The public health officials contacted by Legislative Post Audit stated that any physical examination requirement was unjustified because the chance of the diseases specified in the exam being transmitted in the setting of a beauty shop or school was extremely remote.

Senior Cosmetologists.....Pages 34 and 36

Our adoption of this license is a source of pride to the Kansas Board of Cosmetologists. We are a fore-runner in the cosmetology field in this license. When we attend the national meetings, much interest is shown in this new license and many states have written to Kansas for information on how to implement this in their states.

This program is designed to encourage the licensed cosmetologist to obtain further education in the cosmetology field. Continuing education is a "must" for the professional cosmetologist. We are very pleased to offer this advanced program to the cosmetologists of Kansas and feel that the additional training these cosmetologists will acquire will reflect in the care they are able to give their patrons. This program was created in the interest of the health and welfare of the general public.

Legislative Post Audit response: *Because the auditors found no relationship between the senior cosmetologist license and the protection of the public, and because State regulation is not intended to provide incentives for improving techniques in hair styling, Legislative Post Audit concludes that the issuance of this license does not appear to be a proper exercise of the State's police power.*

Written examination requirements.....Page 35

The National Cosmetology Test has 100 questions. There are an additional 25 questions regarding the Kansas State law. It has always been felt that a cosmetologist should know the laws governing their profession and how their money is allotted. We have found that several other states require an out-of-state person desiring to become licensed in their state, to study their laws and pass an examination on that portion.

Legislative Post Audit response: *The auditors found that the current questions on the Kansas portion of the examination--which include questions about the amount of license fees, the number of Board members, and the length of their term--have no bearing on a cosmetologist's proficiency or on the protection of the public.*

Schools of Cosmetology.....Page 36

This is another area that is in the process of being changed by our rules and regulations. We are requesting the deletion of the requirement asking for schools to refrain from advertising and the giving of scholarships.

Out-of-State Transfer Students and Cosmetologists.....Page 37

We are asking for a change in our rules and regulations to allow full reciprocity with other states for the licensed cosmetologist, with the exception they would be required to pass a test in regard to our State laws. This would eliminate the problem of losing any hours accumulated when transferring to another state.

Inspections conducted by the Board.....Page 38

We have three full time inspectors that cover the State of Kansas working all of the "specials", meaning, new shops to be opened, shops being transferred, and complaints being checked, in addition to the routine checks. We are agreeing that the need is there for a time table and additional training for the inspectors and we will implement such a plan immediately.

Composition of the Board.....Page 38

It was pointed out that members of the board might have conflicting interests. One sentence there states that one board member is currently the president of the Kansas Cosmetology School Association. She served in this capacity for only two to three months until a replacement could be voted on at their first organized meeting.

The statement that the president of the Kansas Cosmetology Association had voted at a board meeting was in error. She had expressed a desire to attend some meetings of the board and was told the meetings were open to anyone that desired to attend. She did make statements during the course of the meeting that would have been recorded in the minutes, but never would she have been allowed to make a motion or second a motion when she did not serve in the capacity of a board member.

Legislative Post Audit response: The audit report did not state that the president of the Kansas Cosmetology Association had voted at Board meetings. It did, however, point out that the Board's minutes indicate the president of the Association had seconded motions at two separate meetings. These minutes are dated April 19, 1976, and December 28, 1977.

This board has had a member represent the public since 1969 and has worked together very well. Our member representing the public, Myra Gross has asked that we enclose her letter with this report.

Type of License and License Fee.....Page 40

There is an error in the bottom line of the types of license and the fee involved. A beauty shop transfer (moving shop locations) has a \$5.00 fee. A change of ownership is the same as a new shop fee of \$20.00.

Retaining the Board.....Page 42-43

We find it necessary to limit shop apprentices for the safety and welfare of the public.

The corrections in regard to physical examinations and pictures are in the process of being eliminated from our rules and regulations. The Board is supportive of maintaining a minimum age of 17 as the age for an apprentice to take their examination for licensure. They also support the requirement for the High School diploma or the equivalent.

Legislative Post Audit response: Legislative Post Audit concluded that such licensure requirements as age and high school education that do not serve to protect the public, that may restrict entry to the profession, or that have no bearing on qualifications to practice cosmetology should be eliminated.

Retaining the Board.....Page 42-43 (cont.)

We are making it easier for an out-of-state transfer to obtain a license in Kansas through reciprocity.

We have a minimum standard of 3,500 square feet. We feel that an area of less than 3,500 square feet for a beauty school would not be conducive to better training.

Legislative Post Audit response: Because Kansas' 3,500 square footage requirement is excessive when compared to the Cosmetology Accrediting Commission's Standards and to the requirement in other states--7 have no square footage requirement and 38 states require less--Legislative Post Audit concluded that the requirement should be revised or eliminated to ensure that a cosmetology school is not unnecessarily denied a license.

The scholarship requirement is being eliminated.

The new rules and regulations are proposing allowing schools to advertise.

We feel it important to have the written examination cover a portion of the laws of the Board of Cosmetology.

The board will establish a stricter schedule for the inspections of beauty shops and schools.

We feel that our inspectors are well trained and working effectively, however we will request them to attend more seminars.

We need board members that are trained in the cosmetology profession to give the examinations and to handle the affairs of the board. One member of the board representing the general public and been an asset. We feel the present members of the board have no conflict of interest. They have no direct contact with the cosmetology industry.

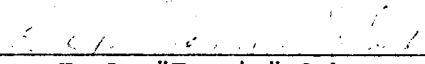
Recommendations.....Page 46

We strongly feel that the Board of Cosmetology should be retained as there is a genuine need for the services they provide.


2. (b) A one time certificate would be down grading the profession and would allow problems of all types in regulating the use of chemicals and providing sanitation to the public.

Respectfully Submitted,

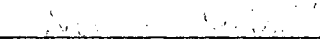
KANSAS STATE BOARD OF COSMETOLOGY



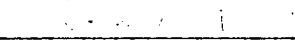
E. A. "Tommy" Osburn, Board Chairman



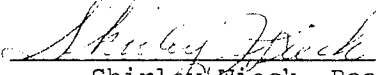
Myra Gross, Board Member




Norma Hutsell, Board Member



Sandra Rush, Board Member



Shirley Wieck, Board Member



Henri Fournier, Executive Director

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SUNSET AUDIT REPORT

KANSAS STATE BOARD OF COSMETOLOGY

Myra Gross, member representing the public on the Board of Cosmetology, would like to make additional comments in regard to the Sunset Audit Report

As a member of the Cosmetology Board, appointed to represent the public, I would like to make the following comments and recommendations concerning proposals I received about the Sunset Audit.

First of all, I would like to recommend that the Cosmetology Board, the Barber's Board of Examiners and the Embalming Board be combined. These boards would all possibly fit into page 44, paragraph 1, and each of these boards have one thing in common-- they all deal with parts of the body. Certainly, if by doing away with one board, as mentioned in the Sunset Audit, the public would be better served, think what combining three boards instead of two would do for them. I propose that there be a single board of nine people, two from each of the former boards and three people who represent the public. Each of the two affiliate members of the board would be responsible for testing and examinations of their particular board, and one public member would be assigned to each of the boards to supervise and assist where needed. I, for one, still feel I would be most useful on the Cosmetology Board as I have given numerous 'Toni's' to myself in my day. I'm sure you will have no trouble finding an experienced mother or father who can assist as a director to the Barber Board, and could probably add a lot with their varied 'bowl-shaped' styles. As for the public member of the Embalming Board, I would not think it would take long for someone to learn the art of embalming, and this should present no real problem that I can see. It would be necessary for the public members to assist, in order to maintain the same quality of testing the public now receives.

Actually, the barber and cosmetology students might be most helpful in cutting down cost to the public and gain on-the-job training by cutting, styling, and coloring the deceased customer's hair and manicuring their nails. As stated on page 31, the last sentence says "Dissatisfied customers are unlikely to patronize a beauty shop again or to recommend that others do so." This pertains to customers of shops not under board regulations, who would be harmed by damaged hair or skin, unclean shops and the transmittal of disease. Needless to say, I am sure you are right, and of course, I would suspect that neither the embalmed customers nor the barber customers would return for their second chance either.

I have tried to visualize the Department of Health, the Federal Drug Administration, the Better Business Bureau, or any other government agency taking over these duties, as suggested in the audit, but gentlemen, it is beyond my wildest imagination to see how these organizations, who seemingly have so many problems of their own, can serve the public better in these areas than it is now being served.

I must say that I feel that this reply should be no less humorous or ridiculous to you than the Sunset Audit I received was to me. If you feel I have wasted your time with this nonsense, I would like to say that a great deal of time has already been wasted before this reply.

Legislative Post Audit response: *The option of combining occupational licensing boards into one or more consolidated boards or into a department of regulatory agencies has already occurred and continues to be considered in Kansas and in other states. For example, in 1976 the Kansas Legislature combined the boards regulating architects, engineers, land surveyors, and landscape architects into the Board of Technical Professions. In 1980, the Legislature consolidated the separate boards regulating psychologists and social workers into a newly created Behavioral Sciences Regulatory Board. In addition, Kansas is one of 23 states that regulate the practice of cosmetology through an independent board. The remaining 27 states regulate cosmetology through an umbrella regulatory agency, a state department of health, or a consolidated board of cosmetologists and barbers. In regard to the effectiveness of public members on licensing boards, the inclusion of public members is becoming increasingly recognized as necessary to ensure a balance between the interests of the industries and the public.*

However, I did find the report enlightening in various areas, and I feel that it has pointed out weaknesses in our board and areas where improvements are necessary. I have found that the two years that I have served as the public member of the Cosmetology Board, have been a learning experience for me and, I would hope, a contributory one on my part. I would like to think that as an outsider of the industry, I have taken a look at both the negative and the positive side of the board and I would like to state the following facts as I personally see them.

1. I find that the demonstration and oral examinations given by the licensed cosmetologists that are members of the board are effective and indiscriminating. I am impressed with the seriousness and dedication of the board, the office staff, and the Executive Director to license these students in the best way to effectively serve the public.

2. I do not believe that a regulatory board, such as the Board of Cosmetology, the Board of Barber Examiners, the Embalming Board, the Real Estate Board, etc. serves its purpose by being a 'find and prosecute' board, but serving rather in a preventative measure. Certainly in my opinion because only 70 complaints, as stated on page 28, may have been made, is a credit to the board. I would look forward to the time when we have no complaints because everyone is operating as they should. When a complaint is filed, or one of the inspectors finds an irregularity, the problem is solved and corrected in the best possible way to protect the public. This does not necessarily mean that the offender has to be 'tar-and-feathered'. In most cases only a reminder is necessary to bring them back into compliance with the rules and regulations. There seems to be some confusion, and perhaps it is on my part, as to whether the audit recommends a stronger or weaker board. I personally prefer to strengthen it.

Legislative Post Audit response: The auditors concluded that the public would continue to be adequately protected if the Board were abolished. They also concluded, however, that if the Legislature chose to continue the Board, certain changes in law and the Board's procedures and operations should be made to reduce restrictions on entry into the profession and to eliminate practices which protect the industry rather than the public.

3. The audit seems to reflect disappointment that the board has not had more problems with reports of lice and damaged hair or skin. I shudder to think what the general public would have to endure if controls were lightened simply because the auditors could not verify, through complaints, inspection results, or through their discussions with public health officials, that any serious problems have, or could occur from unclean shops or diseases being transmitted", as stated in paragraph 3 on page 31.

Legislative Post Audit response: After lengthy discussions with public health officials and after examining factual evidence concerning the incidence of diseases related to the practice of cosmetology, other types of harm, and their potential for posing a serious health problem, the auditors concluded that the public health, safety, and welfare would not be significantly harmed if regulation by the Board were eliminated.

4. I found page 32 of the report interesting. I am in agreement that the primary purpose of regulation is to protect the public, but I also feel that if the industry is to exist to serve the public, we must protect its interest also. Because of not being as informed as I should be in the area of the schooling and some of the other requirements, I cannot, at this time, express a clearer view of the situation.

5. I am a member of the Real Estate Board. When I was appointed to serve on the Cosmetology Board I was impressed that they already had programs that we in the Real Estate industry were working to achieve, such as the continuous educational requirements. At the same time the Real Estate Board is seeking to up-grade their standards and requirements, the audit suggests lowering the training and educational requirements of the Cosmetology Board. I am finding this difficult to understand since both are taking place at the same period in time.

Legislative Post Audit response: It should be noted that the respondent is not a member of the Kansas Real Estate Commission.

6. To eliminate the Board of Cosmetology would be a gross injustice to the public. As stated on page 40, paragraph 4, "it pays its way and does not appear to significantly effect the cost of goods and services to the public." The public receives very few 'almost free services'. You would be saving the tax payers nothing, in fact you may even add additional taxes to the public by placing them under government agencies. Why would you even consider eliminating this board?

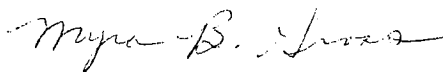
Legislative Post Audit response: One purpose of a sunset audit is to examine the need for government to regulate a profession in order to protect the public health, safety, and welfare. If the public is adequately protected without regulation, that regulation, no matter how efficient and inexpensive, is unnecessary.

7. If serving the public was the purpose of this audit, why were they not included in the survey? Neither they nor their representative were asked a single question as to how they feel about going back to the 'good ol'days' when they might have to worry about head lice and unsanitary shops.

Gentlemen, I was appointed to the board to represent the public and this I intend to do. As pointed out in this audit, the Board of Cosmetology is functioning with a limited amount of problems and violations, at THEIR OWN EXPENSE, and are continually working with the help of their members to upgrade the services to the public. To do anything but improve the board that now exists, you would, in my opinion, take away something that is good for the public and give them nothing but problems in return.

Please give this matter very serious consideration. Thank you.

Very truly yours,



Myra B. Gross

**LEGISLATIVE DIVISION OF POST AUDIT
PERFORMANCE AUDITS ISSUED**

CONSTRUCTION

The Planning and Construction of New Facilities at the Board of Regents' Institutions
(March 1977)

COURTS

Analyzing the State Takeover of Salaries for District Court Personnel (February 1979)
Court Unification in Kansas (September 1979)

EDUCATION

Collecting Enrollment Fees at the Regents' Institutions (November 1977)
The Kansas Community Junior College System:
Part I: State Financing and Supervision (June 1978)
Part II: The Transfer of Courses to Regents' Universities (January 1980)
Off-Campus Education in Kansas (September 1980)

FINANCIAL MANAGEMENT

Accounts Receivable Management: Establishing an Effective Credit Management
System in Kansas (December 1976)

HEALTH AND WELFARE

Selected Support Services at the University of Kansas Medical Center (January 1976)
Controlling Medical Assistance Costs in Kansas:
Part I: Improved Accountability Through Better Program Information and More
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Part II: Options for Containing Costs (December 1977)
Part III: Improving Controls Over Fraud and Abuse (September 1980)
Improving General Assistance in Kansas (January 1978)
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NATURAL RESOURCES

Regulating the Appropriation and Use of Water (December 1975)
Management of Surplus State-Held Land (May 1976)

SUNSET—REVIEW OF REGULATORY AGENCIES AND PROGRAMS

Athletic Commission (November 1978)
Mobile Home and Recreational Vehicle Commission (November 1978)
Abstracters' Board of Examiners (November 1978)
Board of Social Work Examiners (November 1978)
Board of Examiners of Psychologists (November 1978)
Board of Examiners in Fitting and Dispensing of Hearing Aids (November 1978)
Department of Health and Environment: Food Service Regulatory Program (September 1979)
Department of Health and Environment: Adult Care Home Regulatory Program (November 1979)
Financial Regulatory Agencies and Financial Regulatory Boards (December 1979)
Board of Accountancy (September 1980)
Board of Barber Examiners (September 1980)
Board of Cosmetology (September 1980)
Board of Embalmers (September 1980)
Real Estate Commission (September 1980)

TRANSPORTATION

The Planning and Construction of the State Freeway System (September 1976)
Assessing the Effectiveness of the Kansas Motor Carrier Inspection System (March 1978)
Maintaining Kansas Highways (January 1979)

