



# TEXAS DEPARTMENT OF LICENSING AND REGULATION

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September 20, 2006

William H. Kuntz, Jr.  
Executive Director  
Department of Licensing and Regulation  
P.O. Box 12157  
Austin, TX 78711

**Re: Legal Opinion Regarding 16 T.A.C. §83.114(f)**

Dear Mr. Kuntz:

Pursuant to your request, the following is the General Counsel's Legal Opinion of the rule history and intent of Title 16 Texas Administrative Code (T.A.C.), Section 83.114(f). TDLR rule 83.114(f) provides that "Food or beverages shall not be prepared on licensed premises for sale or client consumption. Pre-packaged food or beverages may be sold to or consumed by clients." You asked whether the aforementioned language prohibits cosmetology establishments from brewing coffee (or a similar beverage) at the establishment and serving it to clients.

Analysis of the history of the department's existing rule under 16 T.A.C. §83.114(f) reveals that the intention of the agency in adopting the current rule language was to carry over the rules of the former Texas Cosmetology Commission, without substantive change. The former Texas Cosmetology Commission's rules under 22 T.A.C. §§83.5(a) and 89.44 prohibited the preparation for sale of food and beverages, prohibited restaurants in a cosmetology establishment without the separation of the facilities, and allowed food and drink sales only by vending machines. The former Texas Cosmetology Commission's rules did not prohibit complimentary beverages for client consumption. When TDLR adopted current rule §83.114(f) for cosmetology establishments, TDLR added language regarding "client consumption" intending to clarify that cosmetology salon and school workers may prepare foods and beverages for their own consumption. Further, it was not the department's intent that the word "prepared" should be interpreted to include adding water to coffee or tea, and other similar activities for client consumption. The current rule's intent and stated purpose upon adoption was to continue the focus, without substantive change, of the prior Texas Cosmetology Commission's rules to protect public safety by prohibiting restaurants at salons and schools without the appropriate separation of facilities.

Given the rule history and intent of §83.114(f), as it was adopted, I recommend that TDLR not enforce any interpretation of the rule that would prohibit a cosmetology salon or school's complimentary offer of coffee, tea, and similar beverages to clients on salon or school premises. I also recommend that department propose a rule to clarify 16 T.A.C. §83.114(f) pursuant to the Administrative Procedure Act, Government Code, Chapter 2001.

Sincerely,

A handwritten signature in black ink that reads "Chris Kadas".

Chris Kadas  
General Counsel