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May 25, 1960

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Mr. Delmer Drinen, Chairman
Arizona State Board of Dispensing Opticians
1026 East Colter Street
Phoenix, Arizona

Dear Sir:

This is in response to your letter dated May 10, 1960, regarding applications from duly licensed optometrists. These applicants contend that under A.R.S. § 32-1691 they are entitled to a license to practice opticianry. The question presented by your letter is:

"Is the Arizona State Board of Dispensing Opticians required to examine and issue licenses to applicants who are licensed to practice optometry in Arizona?"

There are two reasons why this question must be answered in the negative. Section 32-1691, supra, exempts optometrists from the operation of the Dispensing Opticians Act. The material part of that section reads:

"This chapter shall not apply to:
1. Any *** optometrist duly licensed to practice under the laws of this state."

In construing a statute, we are required to consider the over-all purpose of the Act. The purpose of the Dispensing Opticians Act is not simply to issue licenses to anyone who might qualify but to be able to control the conduct of those to whom these permits have been assigned, in order to protect the visual health of the public. Issuing a license to an optometrist does not give the Board the authority to control him in his practice. Revoking or suspending his license would not deter him from practicing opticianry. Thus an interpretation requiring the Board to license optometrists would be unreasonable and absurd, in that the purpose for which the Act was made would be defeated. A statute will not be construed as requiring a useless thing, unless the language clearly says so. We have found nothing in the entire Opticians' Act which requires that kind of construction.

Another reason why the Board is not required to examine and license duly qualified Arizona optometrists is that in interpreting statutes the legislative intent may be derived from implication,

Mr. Delmer Drinen, Chairman
Arizona State Board of Dispensing Opticians

May 25, 1960
Page Two

and what is implied in a statute is as much a part of it as what is expressed. The express legislative command in A.R.S. § 32-1691 is that the Board is prohibited from demanding that optometrists submit themselves to the terms and conditions of the Dispensing Opticians Act. It is implied in that statute that those classes of persons mentioned therein cannot require the Board to examine and license them.

If the physician (medical or osteopathic) or optometrist could require a license from the Board, it could possibly be argued that interns, as well as persons who sell sunglasses, colored glasses, if they do not have refractive value, could demand a license.

We appreciate the distinction existing between the several groups exempted by A.R.S. § 32-1691, supra. However, insofar as this Act is concerned, they are similarly treated. Neither of them is required to have a dispensing optician's license and neither can demand that the Board issue a license to him.

For these reasons,---because the purpose of the Act demands that only persons upon whom the Act is effectual be issued license, because laws should not be construed to do a futile or useless thing, and because impliedly the Board cannot be required to issue a license to one exempted under this Act---it is the opinion of the Department of Law that the Board is not required to examine and issue license to applicants who are licensed to practice optometry in Arizona.

We trust this information is of value to you. If we can be of additional help, do let us know.

Very truly yours,

WADE CHURCH
The Attorney General

H. B. DANIELS
Assistant Attorney General

HBD:c

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