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ARIZONA ATTORNEY GENERAL

September 6, 1951  
Op. No. 51-240

Arizona State Board of Optometry  
144 East Glendale Avenue  
Glendale, Arizona

Attention: John E. Fahrendorf, Secretary

Gentlemen:

This is in reply to your letter of August 31, 1951, wherein you ask this question:

" \* \* \* Is it your opinion that Optometry in the State of Arizona shall be recognized as a profession, \* \* \*"

It appears to us that our statutory definition of "optometry" designates optometry as a profession. This is found in Section 67-1401 ACA 1939, which is as follows:

"The practice of optometry is the employment of any objective or subjective means or methods, other than the use of drugs, to determine the refractive powers of the human eye, or any visual or muscular anomalies thereof, and the prescribing or adapting of lenses or prisms for its correction or relief. No person shall engage in the practice of optometry in the state, or hold himself out as able to examine the human eye, or test its vision, for the purpose of prescribing or fitting lenses or prisms, unless he has first obtained a certificate of registration as herein provided, \* \* \*"

Our statutes further provide for the examination of individuals who desire to practice optometry within the state. Section 67-1404 ACA 1939, as amended, provides:

"Any person over the age of twenty-one (21) years, of good moral character, desiring to engage in the practice of optometry, may file with the secretary of the board a verified

application for examination accompanied by an application fee of twenty-five (\$25.00) dollars. The application shall be filed not less than two (2) weeks prior to the date on which an examination is to be held, and shall show: 1. the applicant's name, age, nationality and address; 2. graduation from a high school giving a regular four-years course, accredited by the University of Arizona, or other school which in the judgment of the board affords an equal preliminary education, and, 3. graduation from a school or university meeting the requirements of section 67-1403, \* \* \*

The requirements of Section 67-1403 are:

" \* \* \* schools giving a minimum total of two thousand (2,000) hours of instruction embracing the following subjects: General anatomy, general physiology, general mathematics, general physics, general optics, ocular anatomy, ocular pathology, theoretical optics, practical optics, theoretical optometry, practical optometry, hygiene, psychology, optical laboratory and clinical work and wherein the instruction will, in the judgment of the board, give the education essential to the proper practice of optometry, and wherein the above course shall be actual work in the class room, laboratory or clinic requiring at least eighty (80) per cent of actual attendance and two (2) years of actual attendance at said school for its completion."

Section 67-1404 (a) provides that the Board shall examine applicants for certificate of registration only in the subjects prescribed in Section 67-1403. Any applicant obtaining a credit of 75% or more in each subject shall be issued a certificate of registration. Section 67-1407 provides for exception as follows:

"This article shall not apply to physicians licensed to practice under the laws of this state, nor prohibit the sale of spectacles and eyeglasses as merchandise, from a permanently established place of business, nor to persons who have heretofore received a license to practice optometry in this state."

Our Supreme Court in the case of Gates v. Kilcrease, 66 Ariz. 328, 188 P. 2d 247, said:

"The word 'physician' in the optometry act was employed in its generic sense and was intended to include both medical and osteopathic physicians in exempting them from licensing under the optometry act."

Our Supreme Court, further defining optometry, giving us the rule regarding the same, in the case of Funk Jewelry Co. v. State of Arizona, 46 Ariz. 348, 50 P. 2d 945, said:

"Article 14, chapter 67 (sections 67-1401 and 67-1408 ACA 1939) contains legislation defining and regulating the practice of optometry. Therein it is provided that a person desiring to engage in the practice of optometry must be over 21 years of age and of good moral character and possess certain specified educational qualifications, pass an examination before the state board of optometry appointed by the Governor, and obtain from such board a certificate of registration. The qualifications of an optometrist, as thus outlined, of course exclude a corporation from the practice. \* \* \*

Dentistry and optometry both belong to the healing arts, and the reason for regulating one is equally applicable to the other. The following observations might as well have been made of optometry:

"The practice of dentistry under the name of a corporation not licensed and not entitled to a license for such purpose is unlawful. "Dentistry is a profession having to do with public health, and so is subject to regulation by the state. The purpose of regulation is to protect the public from ignorance, unskillfulness, unscrupulousness, deception, and fraud. To that end the states requires that the relation of the dental practitioner to his patients and patrons must be personal." \* \* \* (Emphasis supplied)

We see here that our Supreme Court has definitely said that optometry is a profession that cannot be practiced by a corporation. The Court further said in Funk Jewelry Co. v. State of Arizona, supra:

"The optometry law is one passed for the general welfare of the people of the state. Its purpose is to protect the health of the state's inhabitants, and, while the state may not have any pecuniary interest in the enforcement of the law, it has a very much higher interest, and that is the protection of the health and well-being of its people."

The Court further said:

"It seems to us that, since the regulation of optometry by the state is the exercise of the police power for the health and general welfare of the people of the state, and since a violation of such statutory regulation is not made a criminal offense, the state, acting through the Attorney General, may ask the courts to exercise their equity powers to enjoin such violations.

\* \* \* \* \*

In the present case, there is no crime involved; the only question being the right of the state to invoke the civil process of injunction to prevent the defendant corporation from violating a health law of the state."

We desire to state at this point by way of clarifying the statement of the court above quoted that the Legislature in 1941, after the above decision, passed what is now known as Section 67-1403 which makes it a criminal offense to practice optometry without a license.

It is therefore our opinion that optometry is a profession within the state of Arizona.

Very truly yours,

FRED O. WILSON  
Attorney General

CHAS. ROGERS  
Assistant Attorney General

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