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April 8, 1952  
Opin. No. 52-102

Mr. C. E. Temple  
Inspector  
Post Office Department  
Little Rock, Arkansas

Re: Case No. 86400-F

My dear Mr. Temple:

This acknowledges receipt of your letter of April 2 in which you ask the opinion of this office on a matter which

" \* \* \* relates to investigation of alleged violation of 18 USC 1821, mailing of dentures constructed and supplied without the prescription of a licensed dentist. The firm under investigation is located in the State of Arkansas but its operations are national and include your state.

Investigation indicates that the company furnishes a restorer material to prospective purchasers who are instructed in rebuilding their old dentures with the restorer material until a satisfactory fit is achieved. The old dentures are then forwarded to the company in Arkansas and a new set is manufactured by a 'duplication' process which includes the taking of a cast or impression of the old dentures.

\*\*\*\*\*

I would appreciate your advising me whether the State of Arizona has statutes bearing on this problem, citing codes thereof, and giving your opinion as to whether the modus operandi described in the second paragraph of this letter violates the wording and/or intent of your statute."

The Arizona statutes bearing upon the question contained in your letter are found in Arizona Code Annotated 1939, 1951 Cumulative Pocket Supplement, and provide, insofar as pertinent, as follows:

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"Section 67-903. Who deemed to be practicing dentistry.--A person shall be deemed to be practicing dentistry who, by himself or by an agent, employee, servant, or contractor, and with specific reference and application to the teeth, gums, jaws, oral cavity, or tissues adjacent thereto, in living persons, shall do or propose, agree, or attempt to do, or make an examination or give an estimate of cost with intent to:

\* \* \* \* \*

(c) Take an impression;

\* \* \* \* \*

(h) Construct, make, alter, or repair an artificial substitute or restorative or corrective appliance;

(i) Do any other remedial, corrective, or restorative work. \* \* \* \* \*

Section 67-905 makes the following exceptions:

"Exceptions.--Nothing in this act shall be construed to prohibit: \* \* \*

(c) An unlicensed person from performing for a licensed dentist merely mechanical work upon inert matter in the construction, making, alteration, or repairing of any artificial dental substitute or any dental restorative or corrective appliance, when the casts or impressions for such work have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by him, but the burden of proving such written authorization or direct supervision shall be upon the person charged with the violation of this provision; \* \* \*

The definition of who is deemed to be practicing dentistry as set out in Section 67-903 prior to its amendment in 1949, contained the words: "for fee, compensation, emolument, or reward, direct or indirect \* \* \*". After the amendment and under the law as it exists presently, the receipt of compensation by a person who is deemed to be practicing dentistry is not an element of the definition.

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The cases of State vs Alexander, 66 Ariz. 396, 189 P 2d 455, and State vs Jacobs, 68 Ariz. 230, 204 P 2d 478, held that, except for the provision making the receipt of compensation an element of the definition, the defendants were practicing dentistry when doing the things outlined in Section 67-903 and were not doing them for a licensed dentist, or under the supervision or authority in writing of a licensed dentist.

The case of State vs Alexander, supra, at page 397 of the Arizona Reporter, provides:

"Specifically, the defendant was engaged in the business of selling a product designed to make loose dental plates fit more perfectly by forming a sort of cushion above the plate. In demonstrating to his customers the proper way to apply his product there is no doubt that he came within the prohibitions of subsections (h) and (i) of the dentistry statute, supra, if, and only if this fitting service was 'for fee, compensation, emolument, or reward, direct or indirect \* \* \*', as it will be noted from a careful reading of the statute that the doing of the enumerated things is the practice of dentistry only if it is for compensation." (Emphasis supplied.)

It would appear from the content of your letter that the restorer material furnished by the company to prospective purchasers is applied by the customer himself and that he manipulates the same until a satisfactory fit of his old dentures is achieved. The company, in performing merely mechanical work upon inert matter in the manufacture of the new denture from casts or impressions which it makes and that had not been furnished by a licensed dentist and not under such licensed dentist's supervision or his written authority, would, then, be deemed to be practicing dentistry.

We trust that this opinion may be of some assistance to you in the investigation mentioned in your letter.

Sincerely,

FRED O. WILSON  
Attorney General

PHIL J. MUNCH  
Assistant Attorney General

PJM:GG