

1948

## CORPORATIONS-RIGHT TO PRACTICE OPTOMETRY THROUGH LICENSED EMPLOYEES

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### Recommended Citation

A. E. Anderson S.Ed., *CORPORATIONS-RIGHT TO PRACTICE OPTOMETRY THROUGH LICENSED EMPLOYEES*, 46 MICH. L. REV. 984 (1948).

Available at: <https://repository.law.umich.edu/mlr/vol46/iss7/13>

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CORPORATIONS—RIGHT TO PRACTICE OPTOMETRY THROUGH LICENSED EMPLOYEES—Defendant, an Oregon corporation engaged in a general optical business, employed in each of its stores a registered optometrist as manager. The

optometrists were paid a flat salary and made examinations free of charge, whether eyeglasses were later purchased from defendant or not. The state commenced a proceeding to oust defendant of its corporate franchise on the ground that it was unlawfully engaged in the practice of optometry. The trial court dismissed the proceedings. On appeal, *held*, reversed. Because of the confidential relationship which exists between practitioner and patient, optometry must be classed as a profession, and it is therefore unlawful for a corporation to practice optometry through licensed employees. *State v. Standard Optical Co. of Oregon*, (Ore. 1947) 188 P. (2d) 309.

There is a wide divergence of opinion as to whether or not a corporation may practice optometry<sup>1</sup> through licensed employees. The courts of thirteen states have held that corporations have no such right.<sup>2</sup> Some of these decisions go on the ground that optometry is now entitled to be considered a learned profession because of the high standards required by statute as conditions precedent to obtaining a license, and because of the trust and confidence reposed in optometrists by those persons employing them.<sup>3</sup> Others are based on the theory that in regulating the practice of optometry the legislature has indicated its intent that the practice of the profession should be limited to individuals.<sup>4</sup> On the other hand, the courts of ten jurisdictions have held that a corporation may properly employ a licensed optometrist.<sup>5</sup> In the absence of statutory sanction these decisions are based on the difference in the required degree of education

<sup>1</sup> As to what constitutes the practice of optometry, see 141 A.L.R. 883 at 888 (1942).

<sup>2</sup> *State v. Goldman Jewelry Co.*, 142 Kan. 881, 51 P. (2d) 995 (1935); *Funk Jewelry Co. v. State*, 46 Ariz. 348, 50 P. (2d) 945 (1935); *Eisensmith v. Buhl Optical Co.*, 115 W. Va. 776, 178 S.E. 695 (1934); *State v. Kindy Optical Co.*, 216 Iowa 1157, 248 N.W. 332 (1933); *McMurdo v. Getter*, 298 Mass. 363, 10 N.E. (2d) 139 (1937); *Neill v. Gimbel Bros.*, 330 Pa. 213, 199 A. 178 (1938); *Röwe v. Standard Drug Co.*, 132 Ohio St. 629, 9 N.E. (2d) 609 (1937); *State v. Buhl Optical Co.*, 131 Ohio St. 217, 2 N.E. (2d) 601 (1936). But see *Dickson v. Flynn*, 246 App. Div. 341, 286 N.Y.S. 225 (1936); *Ezell v. Ritholz*, 188 S.C. 39, 198 S.E. 419 (1938); *State Board of Optometry v. Gilmore*, (Fla. 1941) 3 S. (2d) 708; *Kendall v. Beiling*, 295 Ky. 782, 175 S.W. (2d) 489 (1943); *Ritholz v. Commonwealth*, 184 Va. 339, 35 S.E. (2d) 210 (1945); *State v. Superior Court for Chelan County*, 17 Wash. (2d) 323, 135 P. (2d) 839 (1943).

<sup>3</sup> See *McMurdo v. Getter*, 298 Mass. 363, 10 N.E. (2d) 139 (1937); *State v. Superior Court for Chelan County*, 17 Wash. (2d) 323, 135 P. (2d) 839 (1943); *State Board of Optometry v. Gilmore*, (Fla. 1941) 3 S. (2d) 708.

<sup>4</sup> See *State v. Goldman Jewelry Co.*, 142 Kan. 881, 51 P. (2d) 995 (1935); *Eisensmith v. Buhl Optical Co.*, 115 W. Va. 776, 178 S.E. 695 (1934); *Neill v. Gimbell Bros.*, 330 Pa. 213, 199 A. 178 (1938).

<sup>5</sup> *Dvorine v. Castelberg Jewelry Corp.*, 170 Md. 661, 185 A. 562 (1936); *State v. Kindy Optical Co.*, 235 Wis. 498, 292 N.W. 283 (1940); *Golding v. Schubach Optical Co.*, 93 Utah 32, 70 P. (2d) 871 (1937); *State v. Gate City Optical Co.*, 339 Mo. 427, 97 S.W. (2d) 89 (1936); *State v. Gus Blass Co.*, 193 Ark. 1159, 105 S.W. (2d) 853 (1937); *Silver v. Lansburgh & Bro.*, (App. D.C. 1940) 111 F. (2d) 518; *Williams v. Mack*, 202 Minn. 402, 278 N.W. 585 (1938); *Jaecle v. Bamberger & Co.*, 119 N.J. Eq. 126, 181 A. 181 (1935); *Klein v. Rosen*, 327 Ill. App. 375, 64 N.E. (2d) 225 (1945).

and training between optometry and professions such as law or medicine.<sup>6</sup> Unless there is an applicable statute,<sup>7</sup> the question resolves itself into this: Does the practice of optometry require such a degree of skill, experience, and education as to create a relationship between the practitioner and his patient such as exists in the traditional professions, or is it essentially a mechanical art, requiring knowledge only of the use and application of certain instruments? It is difficult to perceive that the practice of optometry involves such a relationship between the practitioner and his patient that it must be classed as one of the subdivisions of medicine, but it must be conceded that the modern trend is in line with the principal case.

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<sup>6</sup> In general, see 102 A.L.R. 343 (1936); 128 A.L.R. 585 (1940).

<sup>7</sup> Statutes permitting corporations to employ optometrists are numerous. See Ark. Acts (1941) Act 94. Minn. Stat. (Mason, Supp. 1936) § 5789.