

2114.

OSTEOPATH—MAY DO WORK OF REFRACTION.

Under the present law of Ohio an osteopathic physician may do the work of refraction.

COLUMBUS, OHIO, May 26, 1921.

DR. H. M. PLATTER, *Secretary, State Medical Board, Columbus, Ohio.*

DEAR SIR:—In your recent communication you request my opinion as follows:

“Will you please inform me if the present law in this state permits an osteopath to do work in refraction?”

Refraction is commonly known as fitting glasses to the eyes by the trying of lenses of different strength thereon and does not include the use of drugs or surgery.

The law relating to the qualifications of physicians, surgeons, osteopaths and those in the practice of optometry is as follows:

“Sec. 1273 G. C. The examinations of applicants for certificates to practice medicine or surgery shall be conducted under rules prescribed by the state medical board. Each applicant shall be examined in anatomy, physiology, pathology, chemistry, materia medica and therapeutics, the principles and practice of medicine, diagnosis, surgery, obstetrics and such other subjects as the board requires. The applicant shall be examined in materia medica and therapeutics and principles and practice of medicine of the school of medicine in which he desires to practice, by the number of members of the board representing such school.”

“Sec. 1288 G. C. The provisions of this chapter shall not apply to an osteopathic physician who passes an examination before the state medical board in the subjects of anatomy, physiology, obstetrics, surgery and diagnosis in the manner required by the board, receives a certificate from such board, and deposits it with the probate judge as required by law in the case of other certificates. Such certificate shall authorize the holder thereof to practice osteopathy and surgery in the state, but shall not permit him to prescribe or administer drugs, except anesthetics and antiseptics. No osteopathic physician holding a license to practice osteopathy at the time of the passage of this act, shall be permitted to practice major surgery, which shall be defined to mean the performance of those surgical operations attended by mortality from the use of the knife or other surgical instruments, until he shall have passed the examination in surgery given by the state medical board, but he may practice minor and orthopedic surgery, not in conflict with the definition of major surgery in this act. The certificate of an osteopathic physician may be refused, revoked or suspended as provided in section 1275 of the General Code of Ohio.”

“Sec. 1295-28 G. C. Every person desiring to commence the practice of optometry, or if now in practice, to continue the practice thereof after January 1, 1920, except as herein otherwise provided, shall take the examination provided in this act and fulfill the other requirements hereof as herein provided. Any person who has been engaged in the practice of optometry in this state for two full years immediately prior

to the passage of this act or for one year in this and for the year preceding it in another state, and is of good character shall be entitled to take a limited examination covering the following only:

- (a) The limitations of the sphere of optometry.
- (b) The necessary scientific instruments used.
- (c) The form and power of lenses used.
- (d) A correct method of measuring presbyopia, hypermetropia, myopia and astigmatism.
- (e) The writing of formulae or prescriptions for the adoption of lenses in aid of vision.

Any person serving in the military or naval forces of the United States who was engaged in the practice of optometry previous to his entering such service shall be deemed as being engaged in the practice of optometry during the time he is in such service.

Any person over the age of 21 years, of good moral character, who has had a preliminary education equivalent to two years of the course in a first grade high school, which shall be ascertained by examination or by acceptable certificate as to credentials for work done in such approved institution, and has graduated from a school or college of optometry in good standing, as determined by the board, which maintains a course in optometry of not less than two years shall be entitled to take a standard examination. Said standard examination shall consist of tests in practical, theoretical and physiological optics, in theoretical and practical optometry and in the anatomy and physiology of the eye and in pathology as applied to optometry. Provided that any person not less than twenty-one years of age who is actually engaged in the practice of optometry at the time of the passage of this act (G. C. Sec. 1295-21 to 1295-35) shall be entitled to take the standard examination merely upon proof to the board that he is of good moral character, and is not addicted to the intemperate use of alcohol or narcotic drugs."

"Sec. 1295-34 G. C. The provision of this act (G. C. 1295-21 to 1295-35) shall not apply (a) to physicians or surgeons practicing under authority of licenses issued under the laws of this state for the practice of medicine or surgery, or (b) to persons selling spectacles and eye-glasses but who do not assume directly or indirectly to adapt them to the eye, or neither practice or profess to practice optometry."

It will be seen by the analyzing of the above statutes that section 1273 G. C. specifies the qualifications of a physician or surgeon; that section 1288 G. C. specifies the qualifications of an osteopathic physician, and further that as compared with the physician, physician being used in the sense as defined in Bouvier's Law Dictionary, Vol. 2, p. 2586, the said definition being:

"A person who has received the degree of doctor of medicine from an incorporated institution,"

the osteopathic physician is limited only, on his passing the examination as outlined in General Code, section 1288, in the prescribing or administering of drugs and there are no limitations as to surgery.

Attention is drawn to General Code, section 1295-34 which exempts physicians or surgeons from the operation of the optometry law.

It is further to be observed that the tendency of the law is to recognize

the osteopath as a physician, the only limitation on his authority to so act being that he shall not prescribe or administer drugs. One who has not passed the required examination is limited to the further extent that he may not practice major surgery. "Major surgery" as defined in a former opinion of the Attorney-General (1919 Opinions, Vol. 1, p. 12) is as follows:

"All operative procedures requiring the use of the knife or other surgical instruments for the opening of any natural cavity of the body or the amputation of any member or part of the body." (107 O. L., 152.)

It is to be observed that the qualifications of the physician, General Code section 1273, above quoted, include all the qualifications of both the osteopathic physician, General Code section 1288, and the practitioner of optometry, General Code section 1295-28, and the qualifications of the osteopathic physician include those of the practitioner of optometry. Refraction is governed by the optometry statutes which exempt both physicians and surgeons from the operation thereof. It should also be remembered that refraction does not require the use of drugs or surgery and that the use of drugs is the only limitation to the osteopathic physician except he who does not pass the required examination cannot prescribe drugs or practice major surgery.

The conclusion of this department therefore is that the present law of this state does permit the osteopathic physician to do the work of refraction.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2115.

BUILDING AND LOAN ASSOCIATIONS—MORTGAGE ON 99 YEAR LEASEHOLD WHETHER OR NOT RENEWABLE FOREVER IS NOT OBLIGATION SECURED BY "REAL ESTATE MORTGAGE" WITHIN MEANING OF SECTION 9662 G. C.

Interest bearing obligations secured by a mortgage on a 99-year leasehold, whether renewable forever or not, are not obligations secured by "real estate mortgages," within the meaning of section 9662 G. C.

COLUMBUS, OHIO, May 26, 1921.

HON. FRANK F. MCGUIRE, *Inspector, Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date, with which you enclosed a letter addressed to your department in behalf of an Ohio savings and loan association, inquiring whether or not interest bearing obligations secured by a mortgage on a 99 year leasehold, not renewable forever, are obligations secured by "real estate mortgages," within the meaning of section 9662 G. C., which empowers such associations to buy "interest bearing obligations secured by real estate mortgages," was duly received.

At common law leasehold estates, whether perpetual or for any number of years, were classed as chattels or chattels real, and subject to the rules of law applicable to personal property. By statutes enacted in this and other states, however, perpetual leaseholds, such as those for 99 years renewable forever, are for certain purposes and to a limited extent regarded as real estate,—but only to the extent specified or provided for in the particular statutes that may