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1. DENTAL CLINIC—BOARD OF EDUCATION—MAY PARTICIPATE IN OPERATION OF DENTAL CLINIC—EXTENT PROVIDED FOR IN SECTION 4838-6 ET SEQ., G. C.
2. PARENT-TEACHER ASSOCIATION—MAY EMPLOY LICENSED DENTIST TO OPERATE DENTAL CLINIC—CHARITABLE BASIS—FEES CHARGED AND PAID TO ASSOCIATION FOR PROFESSIONAL SERVICES—LICENSED DENTIST EMPLOYEE OF ASSOCIATION—VIOLATION OF SECTION 1320 G. C.
3. CORPORATION—WHETHER OR NOT SUPPORTED BY COMMUNITY FUND—NOT AUTHORIZED TO ENGAGE IN PRACTICE OF DENTISTRY—DENTAL CLINIC—FEES CHARGED AND COLLECTED.
4. LICENSED DENTIST—MAY NOT LAWFULLY ACCEPT EMPLOYMENT FROM CORPORATION OR ASSOCIATION, PERSONS NOT LICENSED AS DENTISTS—PROFESSIONAL DENTAL SERVICES—FEES CHARGED AND COLLECTED—SECTION 1329 G. C.

SYLLABUS:

1. A board of education may participate in the operation of a dental clinic only to the extent for which provision is made in Section 4838-6 et seq., General Code.

2. A parent-teacher association may employ a licensed dentist to operate a dental clinic on a purely charitable basis; but the operation of a dental clinic by such association under an arrangement whereby fees are charged and paid to the association for professional services rendered by a licensed dentist as an employee of such association would amount to a violation of Section 1320, General Code.

3. A corporation, whether or not partially supported by a local Community Fund, is not authorized to engage in the practice of dentistry; and such corporation would be unlawfully engaged in the practice of dentistry where it has undertaken to operate a dental clinic by utilizing the professional services of licensed dentists and to charge and collect a fee for such professional services.

4. Under the provisions of Section 1329, General Code, a licensed dentist may not lawfully accept employment from a corporation or association of persons not licensed as dentists under the terms of which employment such employe performs professional dental services for which such corporation or association charges and collects a fee.

Columbus, Ohio, August 5, 1952

Hon. Hugh B. Smith, Secretary, Ohio State Dental Board
Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

"We respectfully request your formal opinion on the following questions :

"1. Is a Board of Education permitted to operate a dental clinic and charge fees for the services rendered?

"2. Can a Parent-Teacher Association operate a dental clinic and employ licensed dentists?

"3. Can a Parent-Teacher Association, or other similar organization, in operating a dental clinic, charge fees for the services rendered?

"4. Is a dental clinic or dental infirmary, incorporated under the laws of this state, and partially supported by the Community Fund, lawfully permitted to charge fees for dental services rendered?

"5. Can a duly licensed dentist in this state accept employment from or enter into an arrangement with any such organization or dental clinic so operated?

"Section 1329, General Code of Ohio, reads in part as follows :

" 'Any person shall be regarded as practicing dentistry, within the meaning of this act, who is a manager, proprietor, operator or conductor of a place for performing dental operations or who, for a fee, salary or other reward paid or to be paid either to himself or to another person, performs, or advertises to perform, dental operations of any kind, * * * .

" 'The term manager, proprietor, operator or conductor as herein used shall be deemed to include any person

" '1. Who employs licensed operators ;
* * *

" 'Whoever having a license to practice dentistry or dental hygiene shall enter the employment of, or shall enter into any of the above described arrangements with, an unlicensed manager, proprietor, operator or conductor may have his license suspended or revoked by the state dental board therefor.'

“The facts initiating this request for your opinion are as follows:

“A parent-teacher association, and some other groups have, through various ways and means, obtained money with which they have purchased dental equipment and established a dental clinic in a school building. The Board of Education provides the room but has no voice in the operation of the clinic. The operation of the clinic is governed by a Board composed of members of the Parent-Teacher Association or allied groups. A dentist is employed part time on a salary basis, which salary is paid from funds accruing to the operating organization. The supplies for the clinic are purchased and paid for in the same manner.

“At the beginning of the school year a letter is sent to the parents of the children in the school asking if they want their children to receive the dental service. If they respond in the affirmative, the child is examined and needed dental work performed after the consent of the parent is received.

“A schedule of fees for the various types of dental work to be performed has been established by the governing body and the parent of the child is billed accordingly for work done. (Some indigent cases are taken care of gratuitously.) These fees are designed to cover the actual cost of operating the dental clinic, including the salary of the dentist.

“In view of the provisions of Section 1329 General Code, we are concerned with the legality of the existence of a dental clinic so operated and conducted, either with or in the absence of fees being collected for the services rendered.

“Your opinion on the above questions will be appreciated.”

The following provision relative to the practice of dentistry is found in Section 1320, General Code:

“Unless previously qualified as provided by law, no person shall practice dentistry in this state until he has obtained a license from the state dental board as hereinafter provided.”

The practice of dentistry is defined in Section 1329, General Code, which reads:

“Any person shall be regarded as practicing dentistry, within the meaning of this act, who is a manager, proprietor, operator or conductor of a place for performing dental operations or who, for a fee, salary or other reward paid or to be paid either to himself or to another person, performs, or advertises to perform, dental operations of any kind or who diagnoses or treats diseases or lesions of human teeth or jaws, or attempts to correct mal-

positions thereof, or who takes impressions of the human teeth or jaws, or who shall construct, supply, reproduce or repair any prosthetic denture, bridge, artificial restoration, appliance or other structure to be used, or worn as a substitute for natural teeth, except upon the order or prescription of a licensed dentist and constructed upon or by the use of casts or models made from an impression taken by a licensed dentist, or who shall advertise, offer, sell or deliver any such substitute or the services rendered in the construction, reproduction, supply or repair thereof to any person other than a licensed dentist, or who places or adjusts such substitute in the oral cavity of another, or who uses the words 'dentist,' 'dental surgeon,' the letters 'D.D.S.,' or other letters or title in connection with his name, which in any way represents him as being engaged in the practice of dentistry.

"The term manager, proprietor, operator or conductor as herein used shall be deemed to include any person

"1. Who employs licensed operators;

"2. Who places in the possession of licensed operators dental offices or dental equipment necessary for the handling of dental offices on the basis of a lease or any other agreement for compensation or profit for the use of such office or equipment; when such compensation is manifestly in excess of the reasonable rental value of such premises and equipment.

"3. Who makes any other arrangements whereby he derives profit, compensation or advantage through retaining the ownership or control of dental offices or necessary dental equipment by making the same available in any manner whatsoever for the use of licensed operators; provided, however, that the above shall not apply to bona fide sales of dental equipment secured by chattel mortgage.

"Whoever having a license to practice dentistry or dental hygiene shall enter the employment of, or shall enter into any of the above described arrangements with, an unlicensed manager, proprietor, operator or conductor may have his license suspended or revoked by the state dental board therefor."

With respect to your question relative to the power of a board of education to participate in a project involving the practice of dentistry, we may first observe that such boards possess only statutory powers. On this point we find the rule expressed in the second paragraph of the syllabus in *State ex rel Clarke v. Cook*, 103 Ohio St., 465, as follows:

"Boards of education, and other similar governmental bodies, are limited in the exercise of their power to such as are clearly and distinctly granted. (*State, ex rel. Locher, Pros. Atty. v. Menning*, 95 Ohio St., 97, approved and followed.)"

The extent to which any powers in the field of dentistry are "clearly and distinctly granted" to a board of education is indicated in Section 4838-6 to 4838-9, both inclusive, General Code. These sections are as follows:

Section 4838-6, General Code:

"The board of education of each city, exempted village or local school district may appoint one or more school physicians and one or more school dentists; provided two or more school districts may unite and employ one such physician and at least one such dentist whose duties shall be such as are prescribed by law. Such school physician shall hold a license to practice medicine in Ohio, and each such school dentist shall be duly licensed to practice in this state. School physicians and dentists may be discharged at any time by the appointing power whether the same be a board of education or board of health or health commissioner, as herein provided. School physicians and dentists shall serve one year and until their successors are appointed and shall receive such compensation as the appointing board may determine. Such boards may also employ trained nurses to aid in such inspection in such ways as may be prescribed by the board. The school dentist shall make such examination and diagnoses and render such remedial or corrective treatment for the school children as may be prescribed by the board of education; provided that all such remedial or corrective treatment shall be limited to the children whose parents cannot otherwise provide for same, and then only with the written consent of the parents or guardians of such children. School dentists may also conduct such oral hygiene educational work as may be authorized by the board of education.

"Such board may delegate the duties and powers, herein provided for, to the board of health or officer performing the functions of a board of health within the school district, if such board or officer is willing to assume the same. Boards of education shall cooperate with boards of health in the prevention and control of epidemics."

Section 4838-7, General Code:

"No member of the board of education in any district in this state shall be eligible to the appointment of school physician, school dentist or school nurse during the period for which he or she is elected."

Section 4838-8, General Code:

“School physicians may make examinations which shall include tests to determine the existence of hearing defects and diagnoses of all children referred to them. They may make such examination of teachers and other school employees and inspection of school buildings as in their opinion the protection of health of the pupils, teachers and other school employees may require. Whenever a pupil, teacher or other school employee is found to be ill or suffering from positive open pulmonary tuberculosis or other communicable disease, the school physician shall promptly send such pupil, teacher or other school employee home, with a statement, in the case of a pupil, to its parents or guardian, briefly setting forth the discovered facts, and advising that the family physician be consulted. School physicians shall keep accurate card-index records of all examinations, and said records, that they may be uniform throughout the state, shall be according to the form prescribed by the superintendent of public instruction, and the reports shall be made according to the method of said form; provided, however, that if the parent or guardian of any pupils or any teacher or other school employee after notice from the board of education shall within two weeks thereafter furnish the written certificate of any reputable physician that the pupil, teacher or other school employee has been examined, in such cases the service of the medical inspector herein provided for shall be dispensed with, and such certificate shall be furnished by such parent or guardian from time to time, as required by the board of education. Such individual records shall not be open to the public and shall be solely for the use of the boards of education and health or other health officer. If any teacher or other school employee is found to have positive open pulmonary tuberculosis or other communicable disease, his or her employment shall be discontinued, or, at the option of the board, suspended upon such terms as to salary as the board may deem just until the school physician shall have certified to a recovery from such disease.”

Section 4838-9, General Code:

“The board of education of a city, exempted village or local school district may enter into a contract with a health district for the purpose of providing the services, as provided by law, of a school physician, dentist or nurse.”

In considering the provisions of former Section 7692, which were virtually identical in pertinent part to Section 4838-6, *supra*, one of my predecessors in office, in Opinion No. 3309, Opinions of the Attorney

General for 1931, p. 785, stated his conclusions in the first and second paragraphs of the syllabus, as follows:

"1. A district health commissioner is not authorized to establish a dental clinic, either upon his own initiative or upon order of the district board of health, for the rendering of remedial or corrective treatment, free of charge, except under the circumstances and to the extent authorized by section 7692, General Code, when the duties and powers with respect to health matters as the same are set forth in said section 7692, General Code, are delegated by a board of education to the board of health or officer performing the functions of a board of health within the school district.

"2. The rendering of free dental, remedial and corrective treatment for school children is limited to the rendering of such treatment for children whose parents or guardians can not otherwise provide for the same, and consent thereto."

In view of the plain and unambiguous language of the statute, and because of the necessity of finding statutory authority for the powers of a board of education, I am impelled to concur in the 1931 opinion, *supra*. It is true that in this opinion the writer was concerned only with the extent to which *free* dental treatment might be rendered. However, in the absence of any statutory provision authorizing a board of education to render such service on any other basis, I must conclude also that such board is without authority to operate a dental clinic in which fees are charged for the services rendered.

Your second and third questions relate to the authority of a parent-teacher association to operate a dental clinic, and to charge fees for services rendered therein. As already observed herein, the practice of dentistry by unlicensed persons is forbidden by the provisions of Section 1320, *supra*. Our first inquiry, therefore, must be whether the operation of such a clinic will constitute the practice of dentistry as defined in Section 1329, *supra*. While the language of this section is not wholly free of ambiguity, I am inclined to the view that the receipt of a fee, salary, or other award, is an indispensable element in the definition of the practice of dentistry. On this point a view was expressed in Opinion No. 2235, Opinions of the Attorney General for 1947, p. 467, in the following language, p. 472:

"An examination of Section 1329 discloses that at the outset thereof no reference whatever is made to a person who is a manager, proprietor, operator or conductor of a place for per-

forming dental operations being so engaged *for profit*. Later therein (paragraph numbered 1) reference is made to a person who employs licensed operators being included within the definition of the term manager, proprietor, etc., at neither place is mention made of such employment being with a view to profit. While paragraph numbered 1 *does not* read 'who employs licensed operators *with a view to profit*' it is apparent that, although not expressly so providing, the element of profit cannot be ignored. This is made evident by reference to the two paragraphs that immediately follow wherein there is mentioned specifically the matter of compensation, profit or financial advantage. If the section is not interpreted as *making profit an indispensable element*, then there would be brought within its operative effect any person who owned a place for performing dental operations and employed a licensed dentist to operate the same even though such operation thereof was not for profit. Under such construction a charitable organization that owned a place for performing dental operations which was being operated by a licensed dentist as its employe, and supplying free dental services to needy persons, would be engaged in the practice of dentistry. It is difficult for me to believe it was the legislative intent for such to be the situation. I feel, therefore, that in interpreting the provisions of said section we are required to start with the proposition that, unless the arrangement is one which contemplates profit or gain, a person who employs a licensed operator to conduct a place for performing dental operations is not within the definition of the term manager, proprietor, operator or conductor." (Emphasis added.)

The syllabus in this opinion is as follows:

"1. A company which maintains on its premises a place for performing dental operations which is operated or conducted by a licensed dentist as a salaried employe of said company, but wherein dental services are performed gratuitously for company employes, is not engaged in the practice of dentistry within the meaning of Section 1329, General Code.

"2. A company which maintains on its premises a place for dental operations which is operated or conducted by a licensed dentist as a salaried employe of said company, and wherein dental operations are performed for fees which are charged employes and paid to said company, is engaged in the practice of dentistry as a manager, proprietor, operator or conductor of a place for performing dental operations within the meaning of section 1329, General Code."

I concur in the conclusions expressed in the syllabus of this opinion, and I perceive no reason why they should not be as fully applicable in the case of an individual, or an association of individuals, as in the case

of a corporation. In either case, we find non-licensed persons contracting with a patient for the rendering of dental treatment for a fee. In such case does it matter that the fees, so charged, are such that a profit, in the ordinary commercial sense, is not realized, i.e., that the fees charged by the association are designed only to cover the actual cost of operating the dental clinic?

In the body of the 1947 opinion, *supra*, it is indicated that an indispensable element in the practice of dentistry is "making profit." In actuality, the statute provides a considerably broader test than this. By its clear terms this section requires a license of any person who (a) "for a fee, salary or other reward * * * performs or advertises to perform dental operations" or (b) "is manager * * * of a place for performing dental operations." By statutory definition the term "manager" includes one "who employs licensed operators."

While it may readily be supposed that the General Assembly, by this enactment, intended to preserve the dentist-patient relationship completely free of control by unlicensed persons in order to prevent interference with professional ethical standards by commercial considerations, it is probably unnecessary to pursue that line of inquiry as affecting the precise test of what constitutes dental practice. The plain result of the broad statutory definition above noted is to forbid any unlicensed person to receive *any* fee for dental services, even though such fee be fixed at such figure as to preclude the realization of a profit in the commercial sense by such person. Accordingly, I conclude that although a parent-teacher association may lawfully conduct a dental clinic on a purely charitable basis, it may not operate such clinic under an arrangement whereby fees are charged and collected for dental treatment, even though such fees are not sufficient to provide a net profit to such association.

All that has been said thus far relative to parent-teacher associations applies with equal force to the incorporated dental clinics which are the subject of your fourth question. Since you mention in this question that such clinics are partially supported by the Community Fund, I assume that such clinics are organized as corporations not for profit.

The status of non-profit corporations in the practice of dentistry was the subject of consideration in Opinion No. 4081, Opinions of the Attorney General for 1948, p. 559. In the course of that opinion the writer noted the

general rules relative to the corporate practice of a profession, as follows, p. 561 :

“As a general proposition neither a corporation nor any other unlicensed person or entity may engage in the practice of dentistry, medicine or surgery or any other professions through licensed employes. In respect to corporations it might be noted that Section 8623-3, General Code, provides inter alia :

“A corporation *for profit* may be formed hereunder for any purpose or purposes, other than for carrying on the practice of any profession, * * *’
(Emphasis added.)

“Two decisions of our supreme court hold that a corporation *for profit* may not engage in the practice of a profession. See *State ex rel Harris v. Myers*, 128 O.S. 366, and *State ex rel Bricker v. Buhl Optical Co.*, 131 O.S. 217. Cf. *Youngstown Park and F Street R. Co. v. Kessler*, 84 O.S. 74. A corporation *not for profit* does not, of course, have the same internal structure as a corporation for profit. But it is felt that no valid argument can be advanced why the reasoning of the court in *State, ex rel. Harris v. Myers*, *supra*, and *State ex rel Bricker v. Buhl Optical Co.*, *supra*, would not be equally applicable in the case of a corporation not for profit. In passing it might be pointed out that corporations of the kind last noted are, except in those instances where special provision is made, required to be organized pursuant to Section 8623-97 et seq. of the General Code.

“Bearing directly on the proposition that a corporation not for profit may not be chartered to engage in the practice of a profession is *Dworken v. Apartment House Owners Assn.*, (1930) 28 N.P. (n.s.) 115. In referring to the purpose clause of the defendant corporation, which clause contained among others this provision ‘*and to furnish such legal service to its members as the Association may deem advisable*’ the court said :

“That the Secretary of State had no authority to issue a charter for a corporation with one of its purposes and objects such as is represented in the language italicized, there can be no doubt or dispute.”

In *Dworken v. Apartment House Owners Association of Cleveland*, 28 N.P. (n.s.) 115, affirmed, 38 O.App., 265, motion to certify overruled, June 10, 1931, the court said with reference to a corporation not for profit profit, p. 119 :

“Now if a corporation cannot be formed in Ohio for the purpose of practicing law directly, it cannot practice law indirectly by employing lawyers to practice for it, as that would be an evasion which the law would not tolerate.”

Since a corporation not for profit may not practice law, it is also clear that it may not practice dentistry. I conclude, therefore, that a corporation, however organized and whether or not supported in part by a local Community Fund, may not lawfully engage in the practice of dentistry.

Your final question relative to the status of a dentist employed by any of the organizations hereinbefore discussed is readily disposed of by an examination of the final paragraph of Section 1329, General Code. For the sake of convenience this paragraph is here again set out as follows:

“Whoever having a license to practice dentistry or dental hygiene shall enter the employment of, or shall enter into any of the above described arrangements with, an unlicensed manager, proprietor, operator or conductor may have his license suspended or revoked by the state dental board therefor.”

Since a “manager” is one “who employs licensed operators” it is quite plain that a dentist could never lawfully accept employment from a corporation or association of persons not licensed as dentists under the terms of which employment such dentist performs dental services for which such employer charges and collects a fee. In the question you present the employer is a corporation or unincorporated association, as the case may be. In neither case is it possible for such employer to become a licensed dentist. Accordingly, it is plain that any dentist who accepts employment from any such organization is acting in violation of Section 1329, General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General