corporation. In my view the two are analogous regardless of whether or not the advertisement states that there is a licensed optometrist in charge of the optometrical department. The corporation in either event is holding itself out as rendering professional services.

In your letter you state that the corporation leases space in its store to an optometrist who is in charge of such space, but that the corporation advertises the department of optometry under its own name and makes all charges in such department in the same manner as charges are made in any other department of the store. Under these circumstances, regardless of what arrangement may have been entered into between the optometrist and the corporation as to salary, commissions, etc., in so far as the public is concerned it is dealing with the corporation which corporation is supplying professional services. A corporation is a fictitious person which can only act through its agents. Upon the statement of facts which you present, the optometrist in charge of the department of optometry is clearly an agent of the corporation just as are other employes in charge of any other department.

In view of the foregoing and in specific answer to your question, it is my opinion that:

1. Corporations are not authorized to practice optometry in this state.

2. When a corporation leases space in its store to a licensed optometrist for an optometrical department and advertises in its own name that it maintains such department, such corporation is practicing optometry, regardless of whether or not the advertisements contain the statement that the department is in charge of a licensed optometrist.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3342.

STATE HOSPITAL FOR INSANE—PATIENT DISCHARGED WHEN ACTION ENTERED ON SUPERINTENDENT'S RECORDS AND APPROVED IN WRITING BY PUBLIC WELFARE DIRECTOR—EFFECT OF DISCHARGE OF PATIENT, NOT UNDER GUARDIANSHIP.

SYLLABUS:

1. *Under the provisions of section* 1964, *of the General Code, where the superintendent of a state hospital has discharged a patient and has indicated such action on the hospital records, he is not required to take further action. Such discharge is of no effect until approved in writing by the Director of Public Welfare.*

2. *The discharge of a patient, who is not under guardianship, from a state hospital under the provisions of section* 1964, *will restore such patient to his original status.*

COLUMBUS, OHIO, June 19, 1931.

HON. JOHN MCSWEENEY, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date which reads as follows:

> "Section 1964 G. C. provides as follows:
>
> 'Section 1964. *When a patient may be discharged.* When the superintendent deems it for the best interest of a patient in a state hospital

he may discharge such patient and indicate such action on the records of such hospital whether such patient be at the time of such discharge actually in such hospital or absent on trial visit, but such discharge shall not be effective until approved in writing by the director of the department of public welfare. No patient, who in the judgment of the superintendent, has homicidal or suicidal tendencies shall be discharged. If, in the opinion of the superintendent, the condition of the patient at the time of discharge or trial visit justifies it, he may permit such patient to leave the institution unattended.'

It is apparent that the superintendent of a state hospital has full power and discretion in determining whether a patient should be discharged or not. It has been held in Attorney Generals' opinions that the fact that a person who has been committed to a state hospital for the insane has been discharged therefrom, does not operate as a vacation of an order of the probate court which appointed a guardian for such person.

It is contended by some of the probate courts of the state that the court should have documentary proof from the superintendent of the hospital of the sanity of former state hospital patients who appeal to the courts for 'restoration to rights and reason.' This Department has always held to the opinion that except in cases where a guardianship exists in the probate court, the discharge of a patient from a state hospital operates as a restoration to the rights of citizenship; that if a guardianship does exist, it is entirely within the jurisdiction of the court to terminate or continue such guardianship. We do not see that it is the duty of the superintendent to certify that a patient is sane and may be 'restored to rights and reason' unless the superintendent is positive of the patient's recovery Many patients of state hospitals go out on trial visit and are improved to the extent that they are later discharged but to say that they have 'recovered' from a medical standpoint would be practically meaningless except in cases where no psychosis existed. There is always a possibility of a recurrence of mental trouble in the majority of cases.

Attached is a form letter which is sent by one of our state hospitals to the next of kin of a discharged patient. A question has been raised concerning the language used in the last paragraph, namely,

'The legal status of ....is now the same as though a commitment had not been made, unless a guardian has been appointed by the probate court, in which event it will be necessary for the court to remove the guardianship.'

It is held by some courts that while the mental status of a discharged patient may be the same as though a commitment had not been made, the legal status is not the same and that it is necessary, whether or not a guardianship exists, that the patient shall be formally restored to 'rights and reason' by the proper county court before the patient can again assume the legal privileges of a citizen, and that a legal restoration may be made by the court only upon evidence that the patient is sane; that such evidence can best be obtained by the court from the medical staff of the hospital in which the patient has been confined.

May we have your opinion on the following questions:

Is it the province or duty of the superintendent of a state hospital for the insane in discharging a patient to certify to the committing probate court that such patient is sane and may be 'restored to rights and

reason'; or is the superintendent's duty accomplished when he notifies the court that the patient has been discharged?

If no guardianship exists in the probate court over a state hospital patient, is it necessary that the court upon the discharge of such a patient, certify that the patient is 'restored to rights and reason'?

Is not the discharge from the state hospital of a patient over whom no court guardianship exists sufficient to effect a restoration to citizenship and the right to transact business?"

Section 1964 of the General Code, which you quote, grants the superintendent of a state hospital authority to discharge a patient when he deems it for the best interest of the patient. When such action is taken he shall indicate the same on the records of the hospital. However, such discharge is of no effect until approved in writing by the Director of Public Welfare. No express provision has been found imposing any power or duty upon the superintendent to make any certificate relative to the patient being restored to his rights and reason, although, of course, such results are generally regarded as following such discharge. There are other sections of the General Code which provide for temporary releases, and the logical effect of the discharge under section 1964 is to permanently liberate the patient. In the case of *Fenney* v. *State,* 16 O. A.., 517, the following is stated in the body of the opinion on page 520 thereof:

> "* * * By Section 1964, General Code, plenary power is granted to the officers of a state hospital for the insane to determine when a patient is restored to reason and to grant him a discharge. If after such discharge a question again arises as to his sanity, he may, by Section 1975, be again examined in the probate court, under similar proceedings to those had when he was originally found insane."

The court in the case above mentioned had under consideration section 13114, General Code, which provided for an insane person under indictment to be committed to the Lima State Hospital "until restored to reason," at which time the accused should be tried. It was argued by the defendant that the probate court should find that he was restored to reason before he could be tried, but the court held against such contentions, as disclosed in the language of the opinion above quoted. While the court undoubtedly was correct in its conclusions, in view of the statutes under consideration, your inquiry presents a different situation.

Section 11010 of the General Code expressly provides the method of terminating a guardianship in such cases, as follows:

> "When the probate judge is satisfied that an idiot, imbecile, or lunatic, or an incompetent by reason of advanced age or mental or physical disability or infirmity, or a person as to whom guardianship has been granted as such, is restored to reason, or that letters of guardianship have been improperly issued, he shall make an entry upon the journal that such guardianship terminate. Thereupon it shall cease, and the accounts of the guardian be settled by the court."

While the discharge of the patient under section 1964, supra, may furnish the basis for the termination of a guardianship under section 11010, supra, such discharge does not in itself accomplish such result.

In the case of *Reno* v. *Love,* 25 O. C. C. (N. S.) 129, it was held, as disclosed by the headnote:

"The discharge of a patient from a hospital for the insane neither vacates an order of the probate court appointing a guardian for said patient, nor provides a basis for impeaching the appointment in a reviewing court, in the absence of an affirmative showing in the record of resignation or discharge; and where the patient subsequent to his release from the hospital files an action in his own name for damages against those who procured his incarceration, it is not error on the part of the court in which the action was brought to substitute the guardian as the party plaintiff and permit him to dismiss the action."

In the body of the opinion by Kinkade, J., the following is stated:

"* * * His discharge from the hospital could not of itself terminate the guardianship. The guardian may have been appointed on grounds other than those on which Mr. Reno was sent to the hospital, but whether this be so or not, a discharge from the hospital can not be held as vacating the order of the probate court appointing the guardian. Section 11010, General Code, which corresponds with Section 6311, Revised Statutes, provides the manner in which guardians may be discharged and reads as follows:"

It has been observed that the judgment in the Reno case, supra, was affirmed by the Supreme Court without opinion, 88 O. S. 623.

In view of the foregoing citations and discussion, and in specific answer to the inquiries propounded, it is my opinion that:

Under the provisions of section 1964 of the General Code, where the superintendent of a state hospital has discharged a patient and has indicated such action on the hospital records, he is not required to take further action. Such discharge is of no effect until approved in writing by the Director of Public Welfare. Of course, there is no objection to a certification being made to the probate court indicating the action taken relative to the discharge.

It is believed that the foregoing is dispositive of the first and second questions presented.

In connection with your third inquiry, it is believed that the foregoing discloses that a proper discharge of a patient under Section 1964, supra, clearly removes the disabilities of a patient except in those instances wherein there is a guardian, or probably where some one has been appointed in a fiduciary capacity by a court of competent jurisdiction, such as a trustee or receiver. In other words, the qualification generally prescribed for persons who may exercise the usual rights of citizens are those of sound mind and not under legal restraint. In view of the cases hereinbefore mentioned, where there is no guardianship, it would appear that a proper discharge will restore a patient to his former status.

In passing, it may be mentioned that in the last paragraph of the form letter which you state is sent to next of kin, it is stated in substance, that if a guardian has been appointed "it will be necessary for the court to remove the guardianship." It is thought that the impression this language is intended to convey is that the discharge does not remove the guardianship; or it is meant that before the patient may handle his estate the guardianship must be terminated. It is therefore believed that your intention in this connection may be more clearly expressed.

Respectfully,
GILBERT BETTMAN,
Attorney General.