

3340.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS RESIDENT DISTRICT DIRECTOR IN LAWRENCE COUNTY—G. C. KINLEY.

COLUMBUS, OHIO, June 19, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted a bond in the penal sum^o of \$5,000.00 upon which the name of G. C. Kinley appears as principal and the name of the Globe Indemnity Company appears as surety.

Said bond is conditioned to cover the faithful performance of the duties of the principal, as Resident District Director in Lawrence County.

Finding said bond in proper legal form, I have endorsed my approval thereon as to form, and return the same herewith.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3341.

CORPORATION — LEASING DEPARTMENT IN ITS STORE TO LICENSED OPTOMETRIST AND ADVERTISING IN ITS OWN NAME THAT IT MAINTAINS SUCH DEPARTMENT—ILLEGAL.

SYLLABUS:

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.*

COLUMBUS, OHIO, June 19, 1931.

The Ohio State Board of Optometry, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

“By a resolution, our Board has the following questions to submit to you, to-wit:

‘X, a corporation, operates a department store. Y, an individual, leases a small portion of said store and puts in a department of optometry, placing a licensed optometrist in charge. X, in advertising its departments under its own name, advertises the department of optometry in its store. In making sales in this department, all charges are made in the name of X, and put on X’s books and paid through X’s cashier. Is this a corporation engaged in the practice of a profession as defined in Section 8623-3?’

Further, can X carry an ad in its own advertising block indicating that it offers the services of a licensed optometrist?’

Our Board has several matters before it of which the above questions

are representative, and we would very much appreciate an opinion from your department, and would appreciate it if your opinion would also incorporate the reasons therefor."

Before determining whether or not the corporation to which you refer is engaged in the practice of optometry, it is necessary to determine the matter of whether or not optometry is a profession. This office has rendered an affirmative opinion upon this question, the syllabus of which is as follows:

"The practice of optometry is a professional business and corporations may not be formed for the practice of optometry."

—Opinions of Attorney General, 1924, p. 218.

At the time of the rendition of this opinion, Section 8623, General Code, prohibited corporations from being organized for the purpose of carrying on professional business. The same prohibition is now contained in Section 8623-3, General Code, in the following language:

"A corporation for profit may be formed hereunder for any purpose or purposes, other than for carrying on the practice of any profession, for which natural persons lawfully may associate themselves, provided that where the General Code makes special provision for the filing of articles of incorporation of designated classes of corporations, such corporations shall be formed under such provisions and not hereunder.
* * * * *

Since corporations may not be organized for the purpose of practicing a profession, they are not, of course, authorized so to do.

It becomes necessary, then, to determine whether or not the advertising of an optometrical department by a corporation constitutes practicing optometry. The recent case of *Dworken v. The Cleveland Automobile Club, a Corporation*, decided March 14, 1931 by the Court of Common Pleas of Cuyahoga County, reported in Ohio Bar, March 24, 1931, is directly in point.

This was an action to enjoin the Cleveland Automobile Club from practicing law. It appeared that the Club had advertised that it had a legal department for its members. In the adjudication of the case, it became necessary to determine whether or not such advertising constituted practicing law. The language of the court upon this point is as follows:

"It is unquestionably true that a very large part of such service does not constitute 'practicing law' within the statutory meaning of such phrases, but, in our judgment, in the following particulars, the defendant has engaged in the practice of law;
* * * * *

(e) By advertising and representing that said defendant maintains a legal department for the purpose of advising its members of any civil legal matters pertaining to or in connection with the operation of automobiles or other motor vehicles exclusively owned or operated by the members of the defendant."

It seems obvious that since advertising by a corporation that such corporation has a legal department for its members constitutes practicing law on the part of such corporation, then advertising by a corporation that it has an optometrical department for its customers constitutes practicing optometry on the part of such

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