

1427.

PRACTICE OF OPTOMETRY IS PROFESSIONAL BUSINESS—CORPORATIONS MAY NOT BE FORMED FOR SUCH PRACTICE.

COLUMBUS, OHIO, May 5, 1924.

SYLLABUS:

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

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

Dear Sir:

I am in receipt of your recent communication, in which you inquire as follows:

“Kindly advise this department whether or not in your opinion the practice of optometry under the statutes of the state of Ohio constitutes professional business and whether or not an Ohio corporation may be formed for that purpose.”

Section 8623, General Code provides:

“Except for carrying on professional business, a corporation may be formed for any purpose for which natural persons lawfully may associate themselves.”

It is first necessary to determine what is meant by “professional business”. The ordinary and natural import of words, consistent with the common sense of a community, is to be adopted in arriving at legislative intent.” *Allen vs. Little*, 5 Ohio, 65.

The Standard Dictionary defines “professional” as: “Connected with, prepared for, engaged in, or appropriate to a profession:”, and defines “profession” as follows:

“An occupation that properly involves a liberal education or its equivalent, and mental rather than manual labor; especially, one of the three so-called learned professions.”

“Business” is defined by the Standard Dictionary as:

“A pursuit or occupation that employs or requires energy, time and thought; trade; profession; calling.”

It is not believed that the words “professional business” can be restricted to the three learned professions of law, medicine and theology, for if such was the intent of the legislature it could have said so in a few words.

Section 1295-28, found in 110 O. L., p. 20, provides:

“Every person desiring to commence the practice of optometry shall take the examination provided in this act and fulfill the other requirements hereof as herein provided.

Any person over the age of twenty-one years, of good moral character, who has had a preliminary education equivalent to a four year 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 who has graduated from a school or college which maintains a course in optometry of not less than two years, shall be entitled to take a standard examination, provided said school or college of optometry is in good standing as determined by the board. The standard examination shall consist of tests in practical, theoretical and physiological optics, in theoretical and practical optometry and in anatomy and physiology of the eye and in pathology as applied to optometry. Any person holding a limited certificate as provided in original section 1295-28 of the General Code, shall be entitled to take the standard examination merely upon proof to the board that he is good moral character, and is not addicted to the intemperate use of alcohol or narcotic drugs."

From the above section it will be seen that to engage in the practice of optometry one must prepare himself by a special course of study in certain technical matters pertaining to optometry and that this would bring the practice of optometry within the definition of "profession", as quoted above.

Further authority tending to show what is considered as a professional business is found in the statutes relating to optometry.

Section 1295-22, General Code, provides:

"That on and after January 1st, 1920, it shall not be lawful for any person in this state to engage in the practice of optometry or to hold himself out as a practitioner of optometry, or attempt to determine by an examination of the eyes the kind of glasses needed by any person, or to hold himself out as a licensed optometrist when not so licensed, or to hold himself out as able to examine the eyes of any person for the purpose of fitting the same with glasses, excepting those hereinafter exempted, unless he has first fulfilled the requirements of this act, and has received a certificate of licensure from the state board of optometry created by this act, nor shall it be lawful for any person in this state to represent that he is the lawful holder of a certificate of licensure such as is provided for in this act, when in fact he is not such lawful holder or to impersonate any licensed practitioner of optometry or to fail to register the certificate as provided in section nine of this act.

Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, for his first offense shall be fined not more than five hundred dollars at the discretion of the court and upon conviction for a second or later offense shall be fined not less than five hundred dollars, nor more than one thousand dollars or imprisoned not less than six months nor more than one year at the discretion of the court."

This section, together with section 1295-28, supra, shows that a license to practice optometry is granted to persons only. A corporation cannot secure a license to practice optometry. It would not be logical to permit a corporation to engage in a business for which it could not be licensed.

It is therefore my opinion that the practice of optometry is a professional business and that corporations may not be formed for the practice of optometry.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*