

Protected Mutual Insurance Association, whose incorporation is authorized by section 9593 et seq. G. C. are returned to you herewith with my approval endorsed thereon.

Respectfully

JOHN G. PRICE.

*Attorney-General.*

1474

OPTOMETRY LAW—TERM PEDDLING AS USED IN SECTION 1295-29 G. C. OF SAID ACT DEFINED—WHEN NON-RESIDENTS ARE AND ARE NOT PERMITTED TO PRACTICE IN OHIO—SAID LAW NOT APPLICABLE TO PHYSICIAN PRACTICING UNDER AUTHORITY OF LICENSE ISSUED UNDER LAWS OF THIS STATE.

1. *The term "peddling" as used in section 1295-29 of the Optometry Act includes practicing optometry from door to door; that is, where the solicitation and optometrical treatment occur concurrently at the place of the patient, rather than at any fixed place of business of the optometrist. Such term excludes the act of merely soliciting patients or customers to come to such place of business for such treatment.*

2. *Under section 1295-32 non-residents not possessing the educational qualifications required by the state of Ohio are not eligible to take the standard optometrical examination, but such non-residents who have been practicing in their own state for two full years immediately prior to the passage of such act, and are of good moral character, shall be entitled to take the limited examination provided for in that section.*

3. *A physician practicing under authority of a license issued under the laws of this state is exempt from all of the provisions of such act.*

COLUMBUS, OHIO, August 3, 1920.

*The Ohio State Board of Optometry, Columbus, Ohio.*

GENTLEMEN—Acknowledgment is made of the receipt of your request for the opinion of this department, as follows:

"This department requests an opinion from your office in regard to the following questions, which have come to us from optometrists throughout the state in regard to interpretation of different sections of the law, known as house bill No. 240, found in 108 O. L. 73.

1. Section 1295-29. What constitutes peddling? Is soliciting—sending out men to make a canvass for business, peddling?

2. Section 1295-32. Are non-residents, who have been in practice in their own state prior to the passage of this act, eligible to take the Ohio standard examination, when they do not meet with the educational qualifications for same?

3. Section 1295-33. Can a physician, who is exempted by this law, from examination, advertise himself as an *optometrist*? Or is this term restricted to those who are licensed under the law?"

Section 1295-29, involved in your first inquiry, in part provides:

"Peddling from door to door, is specifically forbidden under penalty of revocation of said certificate by said board."

Webster defines "peddled" as a transitive verb, as follows:

"To go about and sell to retail and carry around from customer to customer; to hawk; to retail in very small quantities."

Bouvier's law dictionary defines "peddlers" to be:

"Persons who travel about the country with merchandise for the purpose of selling it; an itinerant trader who carries goods about in order to sell them and who actually sells them to purchasers, in contradistinction to a trader who has goods for sale and sells them, at a fixed place of business \* \* \*."

In *Ballou vs. State*, 87 Ala., 144, it is held that the distinctive feature is not so much the mode of transportation as the fact that the peddler goes about from house to house or place to place carrying his merchandise with him and concurrently sells and delivers it.

In *Cigar Stores Co. vs. Von Barger*, 7 O. N. P. (N. S.) 420, it is said that the word "peddler" means "an ambulatory person, not a merchant with a fixed location."

The term used in the section under discussion of itself is suggestive of the definitions above quoted, and further authorities need not be cited. It may be concluded, therefore, that the term "peddling" as used in section 1295-29 of the optometry act includes practicing optometry from door to door; that is, where the solicitation and optometrical treatment occur concurrently at the place of the patient, rather than at any fixed place of business of the optometrist. Such term excludes the act of merely soliciting patients or customers to come to such place of business for such treatment.

Your second inquiry relative to the rights of non-residents under section 1295-32 is solved by that part of this section which provides for the granting of a license by way of reciprocity, requiring the applicant to show

"also that the standard of requirements adopted and enforced by said board is equal to that provided for by this act, \* \* \*."

In your statement it is said that the non-residents about whom you inquire do not meet with the educational qualifications of this state. This results in a negative answer to your question so far as your question relates to section 1295-32.

However, if such non-residents had been engaged in the practice of optometry in their own state for two full years immediately prior to the passage of the act of which section 1295-32 and 1295-28 are a part, then a different question would be presented.

Section 1295-28 in part provides:

"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:" (Then follow an enumeration of the subjects of examination, which it is not necessary to repeat.)

From this it follows that there are no educational qualifications required of those who have been practicing according to this part of section 1295-28, and one who had been practicing the required length of time in his own state and otherwise complied with the act, would be within the class who could show a standard of requirements equal to that provided for by this act, and it would be the intent and purpose of the act to grant a license to such applicants.

As to your third question, it is noted that you refer to section 1295-33. Section

1295-34 is the section which pertains to the matter stated in question No. 3. That section in part provides:

"The provisions of this act 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."

While other parts of the optometry act, particularly section 1295-22, make it unlawful for any person to practice or hold himself out as a practitioner of optometry without a license from the state board, yet the provisions of section 1295-34, above quoted, certainly have the effect of exempting physicians from all of the provisions of the entire act, and the answer to your third question is also in the negative.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

1475.

JUVENILE COURT—PERSON COMMITTED BY SAID COURT TO BOARD OF ADMINISTRATION FOR EXAMINATION BY BUREAU OF JUVENILE RESEARCH—WHERE PERSON DECLARED INSANE AND ASSIGNED TO HOSPITAL FOR INSANE—LEGALLY IN SAID INSTITUTION—CLOTHING FURNISHED SUCH PERSON NOT CHARGEABLE AGAINST COUNTY OF SAID PERSON'S LEGAL RESIDENCE UNDER SECTION 1962 G. C.

1. *When a person has been committed by the juvenile court to the board of administration for examination by the bureau of juvenile research and has by that bureau been declared to be insane and recommended to be assigned to a hospital for the insane for observation and treatment, such person is legally in said institution.*

2. *Clothing furnished such person so received by the superintendent of an institution for the insane may not be charged against the county of said person's legal residence under section 1962 G. C.*

COLUMBUS, OHIO, August 3, 1920.

*Ohio Board of Administration, Columbus, Ohio.*

GENTLEMEN:—The receipt is acknowledged of your recent request which is as follows:

"One E. M. was recently committed by the juvenile court of Cuyahoga county to the board of administration for examination at the bureau of juvenile research.

The bureau diagnosed the case as psychopathic, and recommended that the boy be assigned to the Cleveland State Hospital for treatment and further observation.

Under the laws of this state all commitments to our hospitals for the insane must be made through the probate courts; the probate judge must see that each patient he commits has proper clothing, which shall be paid for by the county.

In this particular case the boy did not have proper clothing upon his admission to the hospital, and the question has arisen as to whether or not the superintendent of the hospital could supply the clothing and charge it