

1132.

APPROVAL, ARTICLES OF INCORPORATION OF THE LINCOLN MUTUAL INDEMNITY COMPANY OF MANSFIELD.

COLUMBUS, OHIO, October 30, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning to you herewith the articles of incorporation of The Lincoln Mutual Indemnity Company of Mansfield, with my approval endorsed thereon.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1133.

APPROVAL, BONDS OF MIAMI TOWNSHIP, HAMILTON COUNTY—  
\$50,000.00.

COLUMBUS, OHIO, October 30, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*

1134.

OPTOMETRIST—SOLICITING FACTORIES FOR EXAMINATION OF EMPLOYEES' EYES IS PEDDLING AND ESTABLISHMENT OF TEMPORARY OFFICES WITHIN STATUTORY INHIBITION.

*SYLLABUS:*

1. *When a licensed optometrist makes a practice of calling upon and soliciting the management of factories for the purpose of examining the eyes of the employees, such solicitation constitutes peddling within the meaning of Section 1295-29, General Code.*
2. *When such optometrist, upon his own initiative, opens temporary quarters in a factory, installs necessary equipment and solicits the examination of the eyes of the employees while practicing at such temporary quarters, such practice constitutes the establishment of temporary offices within the meaning of Section 1295-29, General Code.*
3. *In the event such optometrist is employed by the factory for such purpose without solicitation on the part of the optometrist, upon the initiative of the factory, and the factory solicits the examination of the eyes of its employees, the establishment of temporary quarters pursuant to such employment is not in violation of Section 1295-29, General Code, even though such optometrist may not be paid for his services by the factory.*
4. *When an optometrist is practicing at a factory at temporary offices in viola-*

*tion of the provisions of Section 1295-29, General Code, the fact that examinations are made of the eyes of other than employees of such factory is not a mitigating or extenuating circumstance. If other than employees are solicited by the optometrist while practicing at temporary offices, such fact would probably be an aggravation of the offense.*

COLUMBUS, OHIO, October 31, 1929.

HON. CLARK SLOAN, *Secretary, Ohio State Board of Optometry, 405 Schofield Bldg., Cleveland, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date which is as follows:

“We respectfully request your opinion, available to the Optometry Board for its meeting on November 11th, if possible, whether or not the following practice constitutes the establishment of a temporary office within the meaning of Section 1295-29, General Code, such as to warrant this board in revoking a license to practice optometry in this state.

‘A’, a licensed optometrist, solicits the management of a factory having numerous employees, for the purpose of making a survey of the eyes of the employees. ‘A’ does not receive any compensation from the factory for such survey but is compensated for his services by selling glasses to the employees. Temporary quarters are furnished by the factory free of charge for such purposes, whereupon ‘A’ installs necessary equipment and proceeds with his examination of the eyes of the employees who are notified of the survey being made and solicited to submit to such examination. Upon completion of such examination of all who will submit thereto, ‘A’ takes his equipment to the next factory and repeats the proceedings herein outlined.

In the event ‘A’ is compensated by the factory in an amount sufficient to authorize him to make such survey, would the situation, in your opinion, be different?

While ‘A’ is engaged in making such survey at a given factory, would the fact that examinations were made of others than employees have any bearing in determining whether or not such acts amount to the establishment of a temporary office within the meaning of the law, in the event ‘A’ is not compensated by the factory for such survey?”

Section 1295-29, General Code, to which you refer, insofar as is pertinent, provides as follows:

“ \* \* \* \*

Each person to whom a certificate shall be issued by said board shall keep said certificate displayed in a conspicuous place in office or place of business wherein said person shall practice optometry, together with the photograph of said person attached to the lower right-hand corner of said certificate and shall whenever required exhibit the said certificate to any member or agent of said board.

Peddling from door to door, or the establishment of temporary offices is specifically forbidden under penalty of revocation of said certificate by said board. Whenever any person shall practice optometry outside of or away from his office or place of business he shall deliver to each person, fitted with glasses by him, a certificate signed by him wherein he shall set forth the amounts charged, his post office address and the number of his certificate. Each person to whom a certificate has been issued by said board shall, before practicing under the same, register said certificate in the office of the clerk of

the Court of Common Pleas in each county wherein he proposes to practice optometry, and shall pay therefor such fee as may be lawfully chargeable for such registry. The clerk of the Court of Common Pleas in each county shall keep a certificate registration book wherein he shall promptly register each certificate for which the fee is paid."

Upon the facts submitted, if the practice of establishing temporary quarters in factories for the purpose of making surveys of the eyes of the employees constitutes the establishment of temporary offices within the meaning of this section there is no question but that such act constitutes grossly unprofessional conduct within the meaning of Section 1295-31, General Code, which section provides that your board may revoke or suspend the operation of any certificate authorizing the holder to practice optometry granted to any person, guilty of grossly unprofessional conduct. Section 1295-29, supra, places the establishment of temporary offices in the same category as peddling from door to door, and it has been held in the case of *State ex rel. vs. Gray*, 114 O. S., 270, at p. 274, that peddling from door to door is the equivalent of grossly unprofessional conduct.

It should be observed at the outset that it is clearly contemplated that every person licensed to practice optometry in this state shall maintain an office or place of business, where the license or certificate issued to such person shall be displayed. It should be further observed that, although Section 1295-29, supra, especially prohibits the establishment of temporary offices, it is recognized that under certain circumstances a licensee may practice optometry outside of or away from his office or place of business. It is provided that under such circumstances, a certificate, as therein defined, shall be delivered to each person fitted with glasses by such licensee. There is no question but that in the ethical practice of optometry, circumstances may arise whereby it may become professionally proper, perhaps absolutely necessary, for an optometrist to practice his profession away from his place of business, as for instance when a patient is ill, or, for some other cause, unable to call upon the optometrist at such place of business, and desires professional services at his home or elsewhere. I am of the view that the provision of Section 1295-29, supra, as to what shall be required of an optometrist whenever he shall practice outside or away from his office, was enacted in contemplation of such circumstances as just mentioned, when such practice would not only be reasonable but probably necessary from a purely ethical and professional standpoint. I do not believe that this provision is in any way inconsistent with the inhibition against the establishment of temporary offices within the meaning of the section here under consideration. It is very evident that the practice which the Legislature has sought to prevent in prohibiting the establishment of temporary offices is the practice of moving from place to place in connection with the solicitation of individuals in a given locality to examine their eyes with the view of selling glasses, and upon the completion of such examinations as the itinerant optometrist may be able to make in a given locality, the moving on to the next locality with a view of repeating the process. It is observed that the inhibition against the establishment of temporary offices is contained in the same sentence wherein is found the inhibition against peddling from door to door. The Legislature manifestly considered the two practices closely allied, as in fact they are.

Upon the first set of facts presented in the second paragraph of your letter, it seems apparent that the optometrist is engaged in the practice of soliciting factories for the purposes set forth. Irrespective of any question as to the establishment of temporary offices, this practice would, in my opinion, constitute peddling even before any examinations are conducted at any given factory. The inhibition is against "peddling from door to door." It cannot be said that this means only residence doors; the term clearly includes factory doors. The Supreme Court, in the *Gray* case, supra,

held that if an optometrist "employed solicitors to solicit and make appointments for him to examine eyes \* \* \* he was guilty of peddling from door to door through agents."

As to the matter of temporary offices, in the ordinary meaning of the term, the office established in each case presented by you is a temporary office. However, a determination of whether or not it is a temporary office within the meaning of the section is a more difficult question in view of the clear contemplation that an optometrist may legally practice away from his permanent office. I am inclined to the view that the determining factor in such a case is the matter of solicitation. To illustrate, if an optometrist goes to a town to spend a week for the purpose of opening offices in a hotel room, advertising his stay in the town of one week and solicits eye examinations, such practice would clearly constitute the establishment of temporary offices within the meaning of the section. Similarly, if an optometrist, upon his own initiative, goes to a factory for a week or a month and solicits examinations while there through posters, advertisements, or otherwise, the situation is no different. On the other hand, if the head of a household asks an optometrist to come to his home to examine the eyes of the family upon the belief that some members thereof may need glasses, and the optometrist takes his equipment to the home and makes the examinations, even though he may not be compensated therefor, it could hardly be said that he had established a temporary office within the meaning of the section. The situation is no different if, instead of being called by the head of a family, the optometrist is called by the head of a factory and the employees are solicited by the factory to have their eyes examined. In neither case is there the element of solicitation on the part of the optometrist. Of course, as long as the optometrist is at his permanent place of business, there is no inhibition against soliciting business. Advertising is permitted. In my view, however, the situation is somewhat different when the optometrist seeks to practice away from his permanent place of business, for then the element of solicitation becomes decidedly indicative as to whether or not the optometrist is peddling or establishing a temporary office within the meaning of this section under consideration.

Summarizing, and in specific answer to your questions, I am of the opinion that :

1. When a licensed optometrist makes a practice of calling upon and soliciting the management of factories for the purpose of examining the eyes of the employees, such solicitation constitutes peddling within the meaning of Section 1295-29, General Code.

2. When such optometrist, upon his own initiative, opens temporary quarters in a factory, installs necessary equipment and solicits the examination of the eyes of the employees while practicing at such temporary quarters, such practice constitutes the establishment of temporary offices within the meaning of Section 1295-29, General Code.

3. In the event such optometrist is employed by the factory for such purpose without solicitation on the part of the optometrist, upon the initiative of the factory, and the factory solicits the examination of the eyes of its employees, the establishment of temporary quarters pursuant to such employment is not in violation of Section 1295-29, General Code, even though such optometrist may not be paid for his services by the factory.

4. When an optometrist is practicing at a factory at temporary offices in violation of the provisions of Section 1295-29, General Code, the fact that examinations are made of the eyes of other than employees of such factory is not a mitigating or extenuating circumstance. If other than employees are solicited by the optometrist while practicing at temporary offices, such fact would probably be an aggravation of the offense.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*