

OPTOMETRY:

Advertisement "prices are reasonable" not indirect advertisement of prices for optometric services within Section 10121 (G) R. S. Mo. 1939, as amended (Laws, 1947, p. 415).

June 29, 1948



Dr. J. R. Bockhorst, Secretary  
Missouri State Board of Optometry  
136 N. Second Street  
St. Charles, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"The Missouri State Board of Optometry has received a complaint regarding one of its optometrists who advertises 'Her prices are reasonable'.

"It is our believe that this constitutes a violation of the Optometry Law, Section 10121, Paragraph G. The basic problem that we have to consider is whether or not this quotation constitutes indirect advertising for optometric services, therefore I respectfully request an interpretation of this matter from your office."

Section 10121, R. S. Mo. 1939, as amended (Laws, 1947, p. 414, 415), contains the following provision:

"The State Board of Optometry may either refuse to issue or may refuse to renew, or may suspend or may revoke any certificate of registration for any one or any combination of the following causes: \* \* (g) Advertising directly or indirectly prices or terms for optometric services".

This provision has not received any judicial construction. Its application to the advertising to which you refer must be determined by the applicable rules of statutory construction. Statutes such as this, providing for the revocation of license to engage in a profession or business, are generally regarded as penal in

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nature, requiring that they be strictly construed in favor of the licensee. (State ex rel. Spriggs v. Robinson, 253 Mo. 271, 161 S.W. 1169; State ex rel. Wolfe v. Missouri Dental Board, 282 Mo. 292, 221 S.W. (2d) 70). The provision must also be so construed as to give effect to the intention of the Legislature. Applying those principles to the section in question, we find that the Legislature has not prohibited entirely advertising by licensed optometrists. The advertising, in order to be objectionable, must be of a nature expressly prohibited by the statute. If the advertising in question is to be considered ground for disciplinary action by the Board of Optometry, it must be because it constitutes indirect advertising of prices for optometric services, since the Legislature must have intended direct advertising of prices to make specific reference to the prices charged.

In the case of Rust v. Missouri Dental Board, 348 Mo. 616, 155 S.W. (2d) 80, l.c. 83, the meaning of the word "indirect" as used in the expression 'advertising directly or indirectly' has its usual and in fact primary meaning, not directly; obliquely; in a round about manner; dishonestly."

We believe that a statement in an advertisement that "prices are reasonable" is not indirectly advertising prices within such meaning of the term "indirectly". Considering the fact that the Legislature has not entirely prohibited advertising, and taking into consideration the rule of strict construction, we believe that the Legislature must have intended to include in the prohibition of indirect advertising of prices, advertising designed to evade the prohibition against direct advertising of prices, or advertising from which prices could be deduced without mentioning exact figures. The advertising in question is not considered to fall within such category, and is believed not to be the type of advertising at which the statute was aimed.

#### CONCLUSION

Therefore, we are of the opinion that an advertisement by an optometrist which contains the words "Her prices are reasonable" is not an advertisement, direct or indirect, of prices or terms for optometric services within the meaning of Sec. 10121 (g) R. S. Mo. 1939, as amended (Laws, 1947, p. 415).

Respectfully submitted,

ROBERT R. WELBORN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General