

OPTOMETRY: It is unlawful for an osteopath to advertise as a  
OSTEOPATHS: registered optometrist when not duly licensed by  
the State Board of Optometry to practice optometry  
in this State.



April 19, 1954

Missouri State Board of Optometry  
359 Paul Brown Building  
St. Louis 1, Missouri

Att: Mr. J. R. Bockhorst, O. D.,  
Secretary

Gentlemen:

This will acknowledge receipt of your request for an opinion,  
the pertinent part of which reads:

"As Secretary to the Missouri State Board of  
Optometry I hereby request an opinion from  
your office as to the legality of the fol-  
lowing question.

"Is it legal for an Osteopath or any person  
to advertise or cause to be advertised the  
statement 'Registered Optometrist' in con-  
nection with their name, in any manner to  
the public, without the benefit of a regis-  
tered certificate as issued by the Missouri  
State Board of Optometry as provided in  
Chapter 336, Revised Statutes of Missouri,  
1949, pages 2632-2638."

Chapter 336, RSMo 1949, contains the Optometry Act passed by  
the Legislature and Section 336.120 RSMo 1949 reads in part:

"The following persons, firms and corporations  
are exempt from the operation of the provisions  
of this chapter except the provisions of section  
336.200:

(1) Physicians or surgeons of any school  
lawfully entitled to practice in this state; \* \* \*

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In view of the foregoing provision, we are inclined to be of the opinion that a duly licensed and practicing osteopath in this State comes within this exemption as they are considered physicians or surgeons and lawfully entitled to practice in this State.

The case of *Stribling v. Jolley*, 253 SW2d, 519, involved the right of osteopaths to practice in county hospitals. The county hospital act, Section 205.300 RSMo 1949 in part provided that no discrimination shall be made against practitioners of any school of medicine recognized by the laws of Missouri. The court, in construing the foregoing provision, concluded, "From this it seems obvious that the legislature, in prohibiting the boards of county hospitals from discriminating against any school of medicine, used language that included osteopathic physicians." The latter part of said section provides that the patient in the hospital has absolute right to the physician of his choice and the court concluded that the legislature, in enacting said provision, considered and called the doctors of osteopathy physicians.

So, in view of said decision, certainly osteopaths come within Section 336.120 RSMo 1949, Subsection 1, as being exempt from the operation and provisions of said chapter on registration of optometrists except the provisions of Section 336.200 RSMo 1949.

Section 336.200 supra, reads:

"It shall be unlawful for any optometrist or any other person, firm or corporation engaged in the manufacture or sale of eyeglasses or lenses to advertise or cause to be advertised any claim or statement which quotes the words 'eyes examined free' or any words or phrases of similar import which would imply to the public that an eye examination will be made without cost or in which said advertisement there is contained any statement which seeks to deceive or mislead the public. The violation of any provision of this section shall constitute a misdemeanor, punishable upon conviction, by a fine of not less than twenty-five dollars nor more than two hundred dollars."

Said statute would include osteopaths engaged in the sale of eyeglasses or lenses. This statute prohibits such persons from

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advertising or causing to be advertised any claim or statement to the effect that eyes are to be examined free or any similar statement that examination would be free. The second part of said statute further prohibits any claim or statement in any such advertisement which seeks to deceive or mislead the public.

The question boils down to this, does the latter part of said statute relate only to any statement that said examination will be free or some statement in the nature of offering free service of examination of eyes or does it relate to any material matter in said advertisement not having any relation to cost or free examination but seeking to deceive or mislead the public?

Speaking of interchangeable use of words "or" and the word "and," Crawford on statutory construction, Section 888, page 322, said in part:

"As a result of this common and careless use of the two words in legislation, there are occasions when the court, through construction, may change one to the other. This cannot be done if the statute's meaning is clear or if the alternative operates to change the meaning of the law. It is proper only in order to more accurately express or carry out the obvious intent of the legislature; \* \* \*"

In State ex rel. Stinger v. Krueger, 280 Mo. 293, l.c. 309, the court, in construing the word "or" and the word "and" as used in a statute, said:

"The word 'or' in statutes or documents is frequently interpreted to mean 'and,' and this interpretation is given to it whenever required to carry out the plain purpose of the act or contract and when to adopt the literal meaning would defeat the purpose or lead to an absurd result, \* \* \*"

We believe the legislature intended that the words "or" and "and" as used in Section 336.200 supra, should be construed in its ordinary literal meaning. We say this for the reason that said section, after providing that it shall be unlawful for any person selling glasses to advertise any claim or statement quoting words, "eyes examined free," continues by including the following words which we claim are all-inclusive of any statement or claim relative to free examination, "or any words of similar

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import which would imply to the public that an eye examination will be made without cost." To hold that the next following words in said paragraph also relate to statements effecting a free examination of the eyes would be an absurd construction. These words are "or in which said advertisement there is contained any statement which seeks to deceive or mislead the public."

A well established rule of statutory construction is that effect must be given, if possible, to every word, clause, sentence, paragraph, and section of the statute, so that one section or part will not contradict, conflict with or destroy another. State ex rel. St. Louis Die Casting Corp. v. Morris, 219 SW2d, 359, 358 Mo. 470. Therefore, in order to give meaning to every word and sentence in said statute, we must hold that the last quoted words in said statute do not simply refer to free cost of examination but anything else that might deceive or mislead the public.

In view of the foregoing construction of Section 336.200 supra, the question now is, does said osteopath, by including in his advertisement "Registered Optometrist" deceive or mislead the public?

We are assuming for the sake of this opinion only, that said osteopath is not actually at this time a duly licensed optometrist under the provisions of Chapter 336 supra, relative to practice, licensing and administration of optometrists.

In such case, such a statement in an advertisement certainly might deceive or mislead the public. Some person might call upon said osteopath to examine their eyes or purchase eyeglasses that might not consider doing so if he were not a licensed optometrist. The law further provides that any violation of the provisions of Section 336.200 supra, constitutes a misdemeanor.

CONCLUSION

Therefore, it is the opinion of this department that a duly licensed osteopath may practice optometry without being licensed to practice optometry by Missouri State Board of Optometry, under the exemption clause of Section 336.120 supra; however, it is unlawful and in violation of Section 336.200 supra for an osteopath not a licensed optometrist to advertise that he is a "Registered Optometrist."

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The foregoing opinion, which I hereby approve, was prepared  
by my Assistant, Mr. Aubrey R. Hammett, Jr.

Very truly yours,

JOHN M. DALTON  
Attorney General

ARH:sm