

Mr. Tobriner's statement in opposition to this bill begins with a court decision [*Silver v. Lansburgh and Bros. et al.*, 72 App. D.C. 77, 111F. 2d 518 1940)]. The key paragraph in that decision which has given the most difficulty is the one which states:

"We find nothing in this statute to indicate that Congress intended to prohibit corporations from employing licensed optometrists. Its primary purpose was to insure that the services would be rendered by competent and licensed persons and thereby to protect the public from inexpertness. * * *

I break the quotation at this point to say that this is about all that can be accomplished for the public under the present law. The problem this bill attempts to attack is how to also protect the public from the unscrupulous. To continue the quotation:

"* * * That purpose may be fully accomplished, though the person rendering the service is employed by a corporation."

The American Optometric Association believes this decision is one of the biggest obstacles to protecting the public from those who would employ the license of an optometrist primarily for their own selfish gain.

The court in *Silver v. Lansburgh* said further:

"Appellants, in the main, have their claim for injunctive relief upon the ground that optometry is a learned profession, the very nature of which, they say, prohibits the practitioner thereof from any affiliation or connection with a corporation or non-optometrist. * * *

"The [trial] court found that optometry is a mechanical art which requires skill and a knowledge of the use of certain mechanical instruments and appliances designed to measure and record the errors and deviations from the normal found in the human eye, but is not a learned profession comparable to law, medicine, and theology, and that, though certain standards of education are prescribed by the statute and by rules of the board created under it, optometry is not a part of medicine. The court was, therefore, of opinion that neither defendant is engaged in the practice of optometry contrary to the statute. * * *

Mr. Chairman, we believe the court in this case was not adequately informed of the scope of optometry or its training and erred in its judgment that optometry is solely a mechanical art using mechanical instruments and appliances. The definition is one dating before 1924. The decision further appears to be predicated upon the wording of the definition of optometry as contained in the 1924 Act and not upon the modern day practice of the profession.

To buttress its case, the Court stated that optometry is not a part of the practice of medicine. We agree. Optometry is an independent coordinate health profession and it is so recognized by the U.S. Department of Health, Education and Welfare. With this statement you will find a letter addressed to the Hon. Henry Helstoski, Congressman from the Ninth District of New Jersey, from Dr. Philip R. Lee, Assistant Secretary for Health and Scientific Affairs. I wish to quote only one sentence from that letter which comes under the heading "H. Acceptance of optometry as a coordinate discipline and profession."

"The profession of optometry is accepted by the Department as a legitimate and essential health profession which is performing highly useful functions in promoting solutions to the eye health needs of this Nation."

Following its statement that optometry is not a part of medicine, the court then reasoned that optometry might therefore be "subjected to commercialization and exploitation" in the following line of argument:

"* * * In the recent case of *United States v. American Medical Association* (decided March 4, 1940) [72] App. D.C. [12 110F. 2d, 703, we pointed out that the practice of medicine in the District of Columbia is subject to licensing and regulation, and we stated that, in our opinion, it might not be lawfully subjected to commercialization and exploitation. We cited many authorities holding that a corporation engages unlawfully in the practice of medicine when it employs licensed physicians to treat patients, itself receives the fee, and the profit objective is its main purpose, the arrangement being such as to divide the physician's loyalty and destroy the well recognized confidential relation of doctor and patient. This brings us, then, to consider whether this rule applies to the practice of optometry.

"Many states have similar or nearly similar statutes, but their courts have disagreed on whether optometry is a learned profession. We have considered the