

cases, and are of the opinion the best considered adopt the view that optometry is not 'one of the learned professions'."

May I break in here again, Mr. Chairman, to say that despite the court's statement in the *Silver v. Lansburgh* case, there is ample legal authority for the proposition that optometry is a profession rather than a narrow technical calling or trade as defined in the 1924 District of Columbia Optometry Law. A significant number of jurisdictions have enumerated this idea as a principle of judge-made or statutory law. The Colorado law is an example of such a statutory expression of policy:

"The practice of optometry in the State of Colorado is hereby declared to affect the public health and safety and is subject to regulation and control in the public interest. Optometry is hereby declared to be a learned profession and it is further declared to be a matter of public interest and concern that the practice of optometry as defined in this article be limited to qualified persons admitted to the practice of optometry in the State of Colorado under the provisions of this article. This article shall be liberally construed to carry out these effects and purposes in accordance with this declaration of policy."

A judicial example to the same effect is *State ex rel. Standard Optical Company v. Superior Court for Chelan County*, (135p. 2d 839, 841, 17 Wash. 2d 823). In its holding that Court stated:

"* * * The legislative intent to place optometry in the same general category as the profession of law, medicine and dentistry clearly appears. Beyond question, the practice of optometry affects the public health and welfare. "The Supreme Court of Massachusetts, in the case of *McMundo v. Getter*, 298 Mass. 363, 10 N.E. 2d 139, followed many cases cited in the opinion, held that optometry is a profession rather than a trade. With this holding we are in entire accord."

In the case of *State ex rel. Beck v. Goldman Jewelry Co.*, 142 Kan. 881, 51 p 2d 995, 1001, 102 A.L.R. 334, the Supreme Court of Kansas held:

"It is our judgment that under our statutes, the legislature, having in mind the protection of eyesight is just as important as the protection of property rights and advice thereon, as the protection of the teeth, as the protection against improper and unauthorized methods of healing, by the enactment of the statutes with reference to optometry, recognized it as a profession and accordingly regulated it, and an examination of those statutory regulations conclusively shows that the practice of the profession is limited to individuals, and that corporations cannot be chartered to engage therein. Not only is the holding a necessary consequence of our statutes, but it is in accord with the weight of authority. * * *"

"Stronger language might be used to characterize them, but as we view them, the contract of employment and the lease in connection with it are devices to avoid the provisions of our statutes with reference to practicing optometry, and cannot avail the defendants."

The approach to the practice of optometry by these authorities is far more modern than that of the U.S. Court of Appeals in *Silver v. Lansburgh*. The court quoted a 1929 history of optometry as the expert source of its information about our profession. As quoted by Commissioner Tobriner in his letter to the Chairman of this Committee the *Silver v. Lansburgh* court said:

"Optometry is said by a well known writer on the subject not to be a part of medicine 'either by inheritance, basic principles, development of practice.' It is 'an applied arm of optical science resting upon the work and discoveries of physicists and opticians through the ages down to modern times. It does not treat the eye, whether in health or disease, but adapts the light waves which enter the eye, in accordance with optical principles so as to produce focused and single vision with the least abnormal exertion on the part of the eye.' Arrington's History of Optometry, p. 24 (1929)

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"* * * There is no more reason to prohibit a corporation, organized for the purpose, from employing licensed optometrists, than there is to prohibit similar employment of accountants, architects, or engineers. We know of no instance in which the right in any of those cases has ever been challenged, though universally all are deemed professions."

"* * * We think the lower court was right in denying injunctive relief, and the decree is, therefore, affirmed with costs."

We have been informed, Mr. Chairman, that it will take an Act of Congress to