

respect, Arnold R. Wolfson, O.D., Garden Grove, California, in an article appearing in the March 15, 1967 edition of the "Optometric Journal and Review of Optometry" (Exhibit 9), adversely commenting upon the relentless condemnation of the employed optometrist by the professional optometric associations, noted:

"We have been talking of higher fees, of raising the cost of eye care to the public * * * We have been doing this and condemning optometrists who attempt to bring the cost of eye care down * * *."

"Optometrists in discount houses, in union plans and in store-type offices can, and in the most cases do, give adequate visual care; at the same time, they promote optometry to the public. Physical surroundings do not indicate the quality of care the patient will receive and neither does the method used to get the patient into the office. It is about time we stopped equating only a 'professional' office with ethical and professional treatment."

As Dr. Wolfson observed, the physical surroundings wherein the optometrist carries on his practice does not determine the quality of the services rendered, as evidenced by the fact that the overwhelming majority of practitioners of optometry in the District of Columbia presently practice in store-front establishments (Exhibit 10). There similarly is no evidence and no showing can reasonably be made that the employed optometrists in the District of Columbia are practicing in an unethical or unprofessional manner.

On the other hand, whatever imperfections exist in the practice of optometry, whether by employed or self-employed optometrists in the District of Columbia, may be remedied under existing legislation. The decision in *District of Columbia v. Fields*, Criminal Action No. DC 3628-66 (District of Columbia, Court of General Sessions, Criminal Division, 1966) makes clear that contact lenses may not be provided by unskilled or unqualified persons. It is also manifest that the Commissioners are vested with authority to promulgate other appropriate or needed regulations (District of Columbia Code, Sections 47-2344; 47-2345). "Bait" advertising or advertising false in other material respects may be dealt with effectively under local law (District of Columbia Code, Sections 22-1411; 22-1413), or where appropriate, by the Federal Trade Commission (See FTCA, Sections 5, 12-16; Trade Practice Rules for the Optical Products Industry, promulgated June 30, 1962).

Conversely, it is submitted that the problems which may exist would not be appropriately dealt with by the elimination of advertising or the corporate employment of optometrists as provided for in HR 1283. In 1937, the Appellate Division of the Supreme Court of the State of New York, in *Dickson v. Flynn*, 246 App. Div. 341, aff'd, 273 N.Y. 72 (1937)* (Exhibit 11), when construing Section 7109 of the State Education Law as sanctioning the corporate employment of optometrists, observed:

"The statute was passed because the legislature believed it an aid to public health, and the courts have held it to be constitutional because of its relation to public health. The benefit was intended for the public, not the optometrist. Otherwise, the statute would have been unconstitutional. The legislature did not deem it necessary to create a professional optometrist monopoly. Poverty or the lack of ability to pay has relation to public health, and the legislature may well have believed that competition between optometrist and store would make for more reasonable prices and profits, and that public health would be benefited thereby and could not suffer with an eye specialist present in the store at the place of sale."

During the last days of the recently concluded session of the New York State Legislature, a bill (Exhibit 12) sponsored by the professional optometric associations, similar in material respects to HR 1283, was favorably voted upon without hearing or meaningful discussion. This legislative action was immediately met with an overwhelming public outcry in opposition by the news media (Exhibit 13), labor organizations (Exhibit 14), business and professional groups (Exhibit 15), and governmental agencies including the New York State Insurance Department, the New York State Department of Commerce and the Economic Council of the Mayor of the City of New York, to name only a few.

*Cited with approval in *People of the State of New York, plaintiff v. Sterling Optical Co., Inc., defendant*, 26 Misc. 2d 412 (Sup. Ct. N.Y. Co. 1960), aff'd 14 A.D. 2d 838 (1st Dept. 1962), aff'd, 11 N.Y. 2d 970 (1962).