

As a consequence and as a result of a fuller exploration and consideration of the facts, the Governor of the State of New York vetoed the legislation, with a message (Exhibit 16) citing the opinion of the New York State Insurance Department that such legislation would "increase costs * * * with no increase in the quality of services".

For all of the foregoing reasons, it is respectfully urged that the Committee reject in all respects HR 1283.

Respectfully submitted.

STERLING OPTICAL Co., INC.
SIDNEY WEINRIB, *President*.

THE PEOPLE OF THE STATE OF NEW YORK, PLAINTIFF, *v.* STERLING OPTICAL Co.,
INC., DEFENDANT

Supreme Court, Special Term, New York County, December 8, 1960.

Corporations—optometry—corporation may employ licensed optometrists and opticians in connection with its sale of eyeglasses (Education Law, §§ 7100, 7120)—but issues of fact exist as to defendant corporation.

1. Though a corporation is not a person who can be licensed to practice optometry (optometrist) or ophthalmic dispensing (optician), a corporation may employ licensed optometrists for the limited purpose of examining the eyes of its customers in connection with the sale of eyeglasses at retail, and for this purpose the corporation may utilize their skill to determine the need for eyeglasses and the prescription to meet such need; and similarly, as a necessary incident to the sale of eyeglasses, the corporation may employ licensed ophthalmic dispensers (opticians) who read the optometrist's prescription and select the lens to conform with such prescription and who adapt the eyeglasses to the customer's face. (Education Law, §§ 7109, 7120.)

2. Issues of fact exist, however, as to whether defendant corporation represents to the public that it provides complete optical care and as to whether its optometrists and opticians thus perform other functions which would constitute the unlawful practice of optometry and ophthalmic dispensing by a corporation.

Louis J. Lefkowitz, Attorney-General, for plaintiff. *Freedman, Loewenstein & Meyers* for defendant.

GEORGE TILZER, J. Motion by plaintiff for summary judgment. Cross motion for judgment on the pleadings, pursuant to rules 106, 111 and 112 of the Rules of Civil Practice, as to the first and second causes of action, to strike out the reply, and for judgment on the pleadings upon the first and second counterclaims, or, in the alternative, for summary judgment on the action and counterclaims.

The action was commenced to annul the corporate charter of the defendant corporation upon the grounds that it has engaged and still continues to engage in the unlawful practice of optometry and ophthalmic dispensing; to enjoin said defendant from the continuance of such unlawful practice; and for the assessment of a fine pursuant to the provisions of section 1216 of the Civil Practice Act.

The defendant takes issue with many of the allegations stated in the complaint. However, sufficient pertinent facts are conceded upon which the court may determine whether, as a matter of law, the plaintiff is entitled to the relief sought.

The defendant maintains a store where it has a large stock of eyeglass frames and eyeglass lenses. It employs optometrists on a salary basis, whose functions are to examine the eyes of customers in order to determine whether such customers need eyeglasses at all, and, if so, what type of optical lense is required. In making the examination, the optometrist uses whatever optical instruments are necessary in the particular case, which instruments are owned by the defendant. The optometrist sets out the particular optical properties of the lens required on a document commonly called a "prescription". The customer is instructed to take such prescription to another part of the defendant's establishment where he or she chooses a frame, after which a duly licensed ophthalmic dispenser, also employed by defendant on a salary basis, sees that lenses of optical qualities to conform to the optometrist's prescription are inserted, and that the frame with the lenses so inserted is properly adapted to the customer's face. The lenses of the required optical properties are cut to fit the shape of the frame. If the customer desires to purchase the frame or lens separately, he may do so.