

ment. 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. Unless some constitutional right is invaded, the clear intent of the Legislature should be given effect.

The business in which the corporation is to engage is the sale of eyeglasses, spectacles and lenses at retail. It does not become the practice of medicine or optometry because of the presence of a physician or optometrist. However, for the sake of the argument, if it be determined that the employment of a physician or optometrist amounts to a limited practice of medicine or optometry, petitioners are still entitled to the relief they seek. All persons had the right to sell eyeglasses before the enactment of article 54 of the Education Law. The Legislature by section 1432-a of that article has explicitly recognized and reaffirmed that right and, in addition, has required that the selling be surrounded by safeguards.

The right to organize a corporation for the purpose of practicing a profession is considered in *People v. Woodbury Dermatological Institute* (192 N.Y. 454). I quote from the opinion: "The prohibition \* \* \* against the practice of medicine without lawful registration in this State or in violation of any of the provisions of the statute or against advertising by any person not a registered physician were not intended to apply and plainly could not reasonably be held to apply to corporate bodies which by the express provisions of other statutes are authorized to carry on the practice of medicine upon compliance with their provisions and without registration" (p. 457). "Thus, a hospital duly incorporated under the Membership Corporations Law unquestionably holds itself out as being able to diagnose, treat, operate and prescribe for human disease, pain, injury, deformity or physical condition \* \* \*. An institution of this character, possessing legislative authority to practice medicine by means of its staff of registered physicians and surgeons, comes under the direct sanction of the law in so doing" (p. 458).

The *Woodbury* case is cited and commended upon in *Messer Co. v. Rothstein* (129 App. Div. 215; aff'd, 198 N.Y. 532). I quote from the opinion in the Appellate Division: "The same court also held in the *Woodbury Dermatological Institute Case* (*supra*) that as the Legislature authorized the formation of corporations for hospital purposes, such corporations would not be guilty of a crime if they should advertise to treat diseases, although not registered under the Medical Act, provided such treatment was administered by duly registered physicians" (p. 225).

A Pennsylvania statute was determined to be unconstitutional by *Liggett Co. v. Baldridge* (278 U.S. 105). It provided: "Every pharmacy or drug store shall be owned by a licensed pharmacist, and no corporation, association, or copartnership shall own a pharmacy or drug store, unless all the partners or members thereof are licensed pharmacists." A license as a pharmacist could be obtained only after a course of study quite as exacting as the New York statute prescribes for optometrists. The ground for the decision was that the ownership of a drugstore had no relation to the public health as other and constitutional laws required that none but a registered pharmacist should be in charge or be permitted to compound prescriptions. The court, in its opinion, states, concerning that statute, "It deals in terms only with ownership. It plainly forbids the exercise of an ordinary property right and, on its face, denies what the Constitution guarantees. \* \* \* In the light of the various requirements of the Pennsylvania statutes, it is made clear, if it were otherwise doubtful that mere stock ownership in a corporation owning and operating a drug store, can have no real or substantial relation to the public health" (p. 113). "If detriment to the public health thereby has resulted or is threatened, some evidence of it ought to be forthcoming. \* \* \* The claim that mere ownership of a drug store by one not a pharmacist bears a reasonable relation to the public health, finally rests upon conjecture, unsupported by anything of substance" (p. 114). With the public health protected through the requirement that a physician or optometrist be in