

Opinion No. 54-5909

February 26, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Paul Tackett District Attorney Second Judicial District Albuquerque, New Mexico

{*350} On February 1, 1954, you addressed an inquiry to this office concerning the application of § 51-701 et seq, N.M.S.A., 1941 Comp., to the question of duplication of broken lenses by opticians without being furnished a prescription.

Section 51-702, defining the practice of optometry, reads as follows:

"51-702. What constitutes practicing optometry -- (a) A person shall be deemed as practicing optometry within the meaning of this act who, by any means or methods other than the use of drugs, diagnoses any optical deformity or deficiency, or visual or muscular anomaly of the human eye, or prescribes lenses, prisms or ocular exercises for the correction or relief of the same, or who represents himself or offers his services as being able to do so.

"(b) The replacement or duplication of an ophthalmic lens, {*351} frame or mounting without a prescription, or written authority from a person authorized under the laws of New Mexico to practice optometry, or medicine. "An ophthalmic lens within the meaning of this act shall be any lens which has a spherical, cylindrical or prismatic value, and which is ground pursuant to a prescription.

"A prescription, within the meaning of this act, shall be a written formula by a person duly licensed under the provisions of this act and which shall contain the following essential elements, viz.:

(1) dioptric power of spheres, cylinders and prisms, axis of cylinders and position of base prisms; (2) Designation of pupillary distance; (3) type, form, size and shape of lenses; (4) Placement of optical centers for distance seeing and near work; (5) in double vision lenses designation of type, and placement of reading segments; (6) type and quality of frame or mounting; type of bridge and distance between lenses, type, length and angling of temples; (7) name of patient, date of prescription and name and office location of prescriber."

Section 51-714 provides exceptions to the act and reads as follows:

"51-714. Exceptions from act. -- Nothing in this act shall be construed as applying to physicians and surgeons duly authorized to practice medicine in the state of New Mexico, nor to persons selling spectacles or eyeglasses who do not represent

themselves as being qualified to detect and correct ocular anomalies, and who do not traffic upon assumed skill in adapting lenses to the eyes."

Optometry, as defined above, seems to go beyond the standard definition of optometry as set out in the New Century Dictionary:

"The measurement of the visual powers, as by the optometer; specif., the practice or art of testing the eyes by means of suitable instruments or appliances (usually without the use of drugs), for defects of vision, in order to fit them with glasses."

The Ohio court held, in *City of Springfield vs. Hurst*, 144 Ohio St. 49, 56 N.E. 2nd 185:

"The optician furnishes eyeglasses upon the prescription of an optometrist and must grind the lenses or have them ground according to prescription, fit them into a frame and bend the frame to fit the face."

Every definition found by this office for "optician" includes the term "in accordance with the prescription" or some similar term.

Thus, we have, under the facts submitted, a question of definition of the term "optometry". Our legislature specifically stated that the replacement or duplication of an ophthalmic lens without the prescription or written authority from a person authorized to practice optometry, is practicing optometry. The legislature has included in the definition of optometry a phase of the optometric practice that does not fall under standard definitions within either the term "ophthalmologist" or the term "optician". This we believe they have the power to do.

Section 51-714, quoted above, exempts ". . . persons selling spectacles or eye glasses who do not represent {*352} themselves as being qualified to detect and correct optical anomalies . . ." The optician by definition is more than a salesman of eye glasses and a person holding himself out to the public to be an optician must, without statute, be considered to be within the standard definitions of an optician. Those definitions, as quoted above, invariably included the use of the term "with a prescription."

Therefore it is the opinion of this office that a person who duplicates an ophthalmic lens without a prescription is practicing optometry and as such must be licensed under the act or is in violation of the same.

We hope that this answers your inquiry.