

1978 WL 35187 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 26, 1978

*1 Mr. Jack S. Folline
President
S. C. Board of Examiners in Optometry & Opticianry
c/o Columbia Eye Clinic
1520 Laurel Street
Columbia, South Carolina 29201

Dear Mr. Folline:

With reference to your letter to me dated October 18, 1978, I have the following comments as to the questions posed:

1. As a State Board, you are eligible for tort insurance which can be obtained through the Budget and Control Board's Division of General Services, at 300 Gervais Street, Columbia, South Carolina. It is my understanding that all that is necessary to obtain this insurance is for a Board member to call Paul V. Hawkins, Insurance Reserves Fund's Manager, at 758-3543. His office can put you on the State insurance and make arrangements for collection of the premium. A related question was asked me by your Secretary-Treasurer during his recent trip to Columbia. He asked if there was any requirement that he be bonded. Under existing [Code § 40-37-90](#), which is unchanged by the new Act, the Secretary-Treasurer is required to give such bond as the Board shall from time to time direct. Consequently, this may be a subject for discussion at your next meeting.

2. There are two separate provisions of law which require you to give notice of your meetings. [§ 40-37-60 of the 1976 Code](#) requires notice of regular meetings of the Board to be given by publication in such papers as may be selected by the Board. In addition, § 9 of Act 593 of 1978, the new Freedom of Information Act, requires all public bodies to give written public notice of their regular meetings at the beginning of each calendar year. This notice is to include the dates, times and places of such meeting. It goes on to state that agendas for regularly scheduled meetings shall be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings, and that notice of any called, special or rescheduled meeting shall be posted on such bulletin board as early as practicable, but not later than twenty-four hours before the meeting. The Act goes on to discuss the manner of posting written public notice and further requires public bodies to make an effort to notify local news media of the times, dates, places and agenda of all public meetings and to record efforts made to comply with this requirement in the minutes of the meetings.

In light of both these sections, I would suggest that the Board publish notices of its meetings in newspapers of general circulation throughout the State and that you locate a bulletin board at your meeting place which will contain the agenda of your meeting.

3. I would advise against your proposed course of action under question 3. I assume that you refer to § 40-37-260 which requires a licensed optician to be on the premises at all times and a full-time employee at any retail optical establishment where spectacles are dispensed. The effective date of this Act was July 1, 1978, and persons violating § 40-37-260 after that date are subject to the penalties provided in § 40-37-310, as well as the administrative sanctions imposed under § 40-37-280. § 40-37-41 charges your Board with the responsibility for investigating complaints and violations of this chapter involving opticians. I am not at all sure that you have discretion to postpone enforcement of the Act past the effective date of the Act. A better course of action might be to simply notify opticians throughout the State of this new requirement and inform them of the Board's duty to enforce it as of July 1, 1978.

*2 4. § 18 of Act 570 of 1978 requires any optician to ‘successfully complete a written qualifying contact lens examination given by the South Carolina Board of Examiners in Opticianry before such optician shall be eligible to dispense contact lenses.’ I believe that we could sustain your decision to use the National Contact Lens Registry examination for the examination required by § 18, provided you set forth the score to be attained on the exam which constitutes successful completion under § 18. The question you pose about those opticians who have already taken and completed this exam is a different matter. All of these people would have taken the exam before the Board designated it as the examination required under § 18 and before the Board set a minimum qualifying score for this exam. Additionally, some people may have taken it even before the effective date of this Act. There is no provision in the Act for ‘grandfathering’ opticians under § 18. § 18 proposes that each optician who is to dispense contact lenses shall take an examination given by the Board after the effective date of the Act. As a consequence, to withstand possible challenges, it is my opinion that any optician wishing to dispense contact lenses should take the exam specified by the Board.

5. Again, § 18 of Act 570 of 1978 controls this question. § 18 requires that the exam must be successfully completed before any optician can dispense contact lenses. Therefore, any optician selling contact lenses after the effective date of this Act is violating Act 570, and is subject to revocation or suspension or prosecution under the Act.

Your last question deals with § 9 of Act 570 of 1978. My interpretation of subsection (3) of that section is that any one of the four listed criteria separated by the disjunctive conjunction ‘or’ will suffice for purposes of subsection (3) of § 40-37-140. The way the section is set up, the third and the fourth criteria in subsection (3) do not appear to be mutually exclusive, so that an in-state or out-of-state applicant would only have to meet one of the four criteria to be registered.

There may be another interpretation of this section possible. It could be that engaging in opticianry for a period of not less than three years would only suffice in states which did not have licensures, and that the three years of apprenticeship would be required for those applicants coming from states which had licensure provisions. However, in light of the structure of subsection (3), I feel that I should take more time to research the history of this section before issuing any formal ruling. Therefore, I will defer answering your last question until I have had time to research the matter.

I realize that I have covered a lot of ground with this informal opinion. However, I believe that my responses to your first five questions should be sufficient guidance to the Board. Of course, I will be happy to discuss these questions in more detail with you or any member of the Board who so desires.

*3 In your letter, you did not give me the location of the November 2nd Board meeting. While it will probably be impossible for me to attend your Board meetings on a regular basis, I will make every effort to drop by during the November 2nd meeting, so that I can meet you new Board members. To that end, I would appreciate your advising me of the location of the meeting.

Yours very truly,

M. Richbourg Roberson
Assistant Attorney General

1978 WL 35187 (S.C.A.G.)