

1975 S.C. Op. Atty. Gen. 141 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4062, 1975 WL 22359

Office of the Attorney General

State of South Carolina

Opinion No. 4062

July 28, 1975

**\*1** An optician, who also is in the business of selling and servicing hearing aids, may not identify himself as an optician when advertising his hearing aid service unless the advertisement is in a manner permitted by the chapter of laws dealing with the regulation of Optometrists and Opticians.

TO: Honorable Dewey Wise  
Senator  
Charleston & Georgetown Counties

#### QUESTION(S) PRESENTED

1. May a licensed optician use his general trade name, e.g., 'Smith Optician', in advertising the availability of hearing aids at his business, without restriction on the format of the advertisement?
2. May a licensed optician advertise a hearing aid service with his general trade name on television?

#### STATUTES, CASES, ETC., INVOLVED

Section 56–1075, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended.

Rule F of the Rules of Practice of Opticianry and Optometry.

[Barringer v. Dinkler](#), 61 F. 2d 82, (1932).

[Piedmont & N. Ry. Co. vs. U. S.](#), 30 F. 2d 421 (1921).

82 C.J.S. Statutes, Section 382 b

Minutes of the S. C. Board of Examiners in Optometry & Opticianry, Meetings of December 4, 1972, and October 7, 1971.

#### DISCUSSION OF ISSUE(S)

Section 56–1075, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, and Rule F of the Rules of Practice of Opticianry and Optometry regulate advertising by opticians. Section 56–1075 does not prohibit the advertising per se by opticians, it instead prohibits any person from advertising certain specified services including the dispensing of eyeglasses, spectacles or parts thereof, the sale of eyeglasses, spectacles, ophthalmic lenses or parts thereof, or the practice of orthoptics.

The practice of opticianry is defined in the Rules and Regulations of the South Carolina Board of Examiners in Optometry and Opticianry. Among other specified responsibilities defined as being within the scope of the licensed

optician is the dispensing of ophthalmic lenses and other prescription ophthalmic devices, frames, and appurtenances to the intended wearer. Webster's Collegiate Dictionary defines an optician in lay terminology as a person who makes or sells eyeglasses and other optical equipment. An individual who identifies himself as an optician or in any manner holds himself out to the public as an optician in South Carolina represents to the public with whom the assertion of identification is communicated that he in fact is licensed to dispense ophthalmic lenses and other prescription devices and frames, and that he sells eyeglasses and other optical equipment. The general public would readily identify these responsibilities with opticians. Therefore by identifying oneself as an optician to members of the general public in the form of an advertisement a person violates the general prohibitory regulation set forth in the first paragraph of Section 56–1075 unless his advertisement falls within one of the specified exceptions to the general rule set forth in paragraph two of the said section.

\*2 The portion of the second paragraph of Section 56–1075 that applicably deals with the issue presented is ‘This section shall not preclude . . . , a dispensing optician who also sells hearing aids from advertising his hearing aid service . . . ’. This exception specifies that an individual who practices opticianry may advertise his hearing aid service. It is a well settled rule of interpretation of statutes that exceptions to a general prohibition in a statute must be strictly construed in connection with the body of the section which it excepts. [[Barringer v. Dinkler](#), 61 F 2d 82 (4 Cir. 1932); [Piedmont and N. Ry. Co. v. U. S.](#), 30 F 2d 421 (4 Cir. 1921) 82 C.J.S. Statutes Section 382 b] A strict narrow interpretation of this exception, consistent with the intent of the legislature, would mandate the following reading thereof. Any advertisement that identified a person as an optician would have to conform with the laws regulating the advertising of opticians. If the advertisement did not identify the person as an optician, Section 56–1075 would not regulate such advertisement. This exception to the general prohibition of Section 56–1075 does not attempt to allow a person to advertise his opticianry services or otherwise identify himself as a optician. The exception's sole purpose and intent is to remove the advertising of hearing aids and related services from this chapter of the law. The said exception permits the advertisement of hearing aid sales and services by a person who also practices opticianry.

Rule F of the Rules of Practice of Opticianry attempts to clarify and spell out with certainty some of the prohibitions under Section 56–1075. It does not or could not alter the statutory language of Section 56–1075.

## CONCLUSION

In conclusion it is the opinion of this office that Section 56–1075, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, prohibits the advertising to members of the general public that one is an optician or is practicing opticianry unless such manner of advertising falls within the statutory exceptions to this prohibition. The advertising of the selling of hearing aid equipment and related services does not provide an optician with an avenue to advertise his opticianry services. Therefore, it is the opinion of this office that a person selling hearing aid equipment and also practicing opticianry may not identify himself to the public as an optician in conjunction with a hearing aid advertisement unless the manner of the advertisement falls within the scope of permitted forms of advertising his work as an optician.

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