

1972 WL 25222 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 23, 1972

\*1 Luther B. Elmgren, O. D.

President

The S. C. Board of Examiners In Optometry

1903 Hampton Street

Columbia, S. C. 29201

Dear Dr. Elmgren:

You have requested that this office advise you as to the validity of the proposed additional amendments to legislative bill S 156.

The proposed amendments include the following:

1. the inclusion of the words 'self-employed' before registered opticians;
2. the wording, all licensed optometrists (and opticians) in South Carolina; and
3. the deletion of 'optometric' before 'member' in the last paragraph of the proposed amendment.

The inclusion of the words 'self-employed' before registered opticians in line two of the draft of Section 56-1054 would have the practical and legal effect of creating a class within a class, precluding from Board membership those optometrists who are not self-employed. This would constitute a discriminatory preference, and it appears clear, violate the due process and equal protection clauses of the United States and the South Carolina Constitutions. It is therefore the opinion of this office that the inclusion of 'self-employed' in this section would not withstand a legal attack as to its validity.

The wording (paraphrased) in the draft of Section 56-1054, 'nominated by all licensed optometrists (and opticians) in South Carolina . . .,' apparently is designed to deny the nominating power from those licensed opticians and optometrists who reside in other than this state. Inasmuch as the qualifications for the licensing of opticians or optometrists contain no residency requirements, it would appear that the proposed amendment would again run afoul of the constitutional prohibitions, as this also creates a class within a class. It may be noted, however, that the two associations vested with the nominating power may provide for voting and non-voting membership based upon residency in their respective by-laws. This would apparently be one way to accomplish the purpose aimed at by the proposed amendment.

The deletion of the word 'optometric' in the last paragraph of the draft of Section 56-1054 is a valid enactment. The present law is discriminatory in placing greater requirements on the optometric members of the Board than on the other members and accordingly should be deleted to preserve strict constitutional standards.

I trust that the foregoing has been sufficient to answer the questions you posed. If we may be of any further assistance to you, please do not hesitate to call or write.

Very truly yours,

Timothy G. Quinn

Assistant Attorney General

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