

1951 O. A. G.

OFFICIAL OPINION NO. 96

November 2, 1951.

Honorable Joseph Klein,  
State Representative,  
Lake County,  
1124 Putnam Street,  
Gary, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

"I am eager to ascertain whether the laws of the State of Indiana governing the practice of the profession of Optometry would be violated by an Optometrist who uses the following words and/or statements in advertising:

'Liberal Budget Terms'

'Credit'

'Charge It'

or words and statements of similar import.

"I would be profoundly grateful to you for an official opinion covering this subject."

Statutes limiting the right of licensed professional groups to advertise have frequently been the subject of litigation.

In the case of Needham *et al.* v. Proffitt (1942), 220 Ind. 265, 41 N. E. 2d 606, it was held that a restriction on advertising must have a sound basis of classification in order to be valid. In that case advertising by funeral directors was prohibited by newspaper or circular but not by radio, etc. The statute in question was declared to be invalid.

However, in the case of Semler v. Oregon State Board of Dental Examiners (1935), 294 U. S. 609, Justice Holmes outlined the justification for such prohibitions as they refer to professions affecting the health and well being of society. The court in that case concluded that, if the requirement were reasonably calculated to prevent fraud and prohibit "bait advertising" they were not in violation of any constitutional provision.

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The Attorney General had before him advertising containing the words "credit" and "credit terms" as regards advertising by a dentist in 1935 O. A. G. 133. The then provision as to advertising concerning dentistry was as follows:

"H. To advertise any price, cost, charge or fee or any reference thereto, for the service performed or to be performed or for the material used or to be used."

He concluded that there was no violation.

The provisions of the Optometry Act which might be applicable are subsection (e) of section 11 of chapter 38 of the Acts of 1935, same being Burns' 63-1018a, which reads as follows:

"(e) Illegal Advertising. For any person to publish, directly or indirectly, or to circulate any fraudulent, false or misleading statements as to the skill or method of practice of any person or of any optometrist, or to advertise in any manner that will tend to deceive, mislead or defraud the public; or to claim professional superiority, or to advertise directly or indirectly, free optometrical services or examinations, as an inducement to the public to procure optometrical services; or to advertise directly or indirectly any amount as a fee for the professional services or to advertise any definite amount and/or terms for prosthetic devices, material or materials constituting all or part thereof which may be furnished and supplied to the public."

And subsection (f) of section 12 of chapter 38 of the Acts of 1935, same being Burns' 63-1019, reads as follows:

"(f) Certain Types of Advertising. For any person or persons to publish or circulate, or print or cause to be printed, by any means whatsoever, any advertisement which quotes prices on glasses, lenses or frames or quotes a discount to be offered to the public for the professional services and/or the prosthetic devices, eyeglasses, lenses or frames, to be furnished to the public, or which quotes 'moderate prices,' 'low prices,' 'lowest prices,' 'guaranteed glasses,' 'satisfaction guar-

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anted,' or words of similar import, or, which advertises any eyeglasses, spectacles, lenses, frames, mountings, or other accessories or prosthetic devices without specifying the kind, type and quality of the same; or which includes in said advertisement the words 'eye examination free,' 'consultation free,' 'free eyesight test,' 'free sight test,' 'examination without the use of harmful drops or drugs,' or any other words equivalent thereto."

On the basis of these statutes, I feel that the problem presented by your request is substantially the same problem presented to the Attorney General in 1935 and, failing to find any reason for differentiating this situation, it is my opinion that the use of the terms listed in your letter would not be a violation of the Indiana statutes governing the practice of the profession of optometry.

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OFFICIAL OPINION NO. 97

November 5, 1951.

Mr. William L. Fortune,  
Treasurer of the State  
of Indiana,  
Indianapolis 4, Indiana.

Dear Sir:

Your request for an official opinion is as follows:

"At the request of the Indiana County Treasurer's Association, I would appreciate it if you could give me an official opinion on the following questions concerning the effect of the 4-year term Constitutional Amendment on the term of office of County Treasurers.

"1. How will it affect Treasurers-elect that are now waiting to take office in January, 1952, for their first term?

"2. How will it affect all Treasurers that will be up for re-election in November 1952?