

Opinion No. 59-156

September 30, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Dr. J. R. Nicholson Secretary-Treasurer State Board of Examiners in Optometry
227 East Palace Avenue Santa Fe, New Mexico

{*242} This is in reply to your recent letter asking the opinion of this office as to whether or not it would be legal to organize a nonprofit organization for a prepaid Group Visual Care Program under the laws of the State of New Mexico.

My answer is, yes, despite the fact that no specific authorization has as yet been granted by way of legislative enactment.

{*243} As was aptly suggested in your letter, the trend that was inaugurated in 1955 by a group of persons licensed to practice optometry in the State of California bids fair to spread from coast to coast and from the lakes to the gulf.

It is the belief of the author of this opinion that it was inevitable that other groups in addition to the sponsors of Physician's Service Plans, would band together in their efforts to combat the physical shortcomings of mankind.

Our statutes define the practice of optometry and the opinions of this office have supplemented and further defined the rights, privileges and responsibilities of persons engaged in the practice of optometry.

Perhaps it is needless to say that while optometrists are not physicians, they are nevertheless engaged in the practice of a profession that is both noble in precept as well as in performance.

A perusal of your chart entitled "Analysis of State Statutes pertaining to organization of State Vision Service Corporation", would indicate that while very few states have actually authorized the formation of non-profit organizations for group visual care by statute, the laws of an overwhelming majority of the states of the union do not prohibit the organization and operation of such corporation.

The State of New Mexico is listed in your analysis in the category mentioned in the preceding paragraph herein.

A careful perusal of our state laws convinces this writer that we have no statutory prohibition against the formation or organization of State Vision Service Corporations.

On the contrary, Section 51-14-22, N.M.S.A., 1953 Comp., (P.S.) reads in part as follows:

"A nonprofit corporation may be formed under this chapter (51-14-20 to 51-14-40) for any lawful purpose, including but not limited to, the following purposes: . . . community welfare general welfare, health . . .".

The all encompassing phraseology of this statute, particularly the word **health**, would seem to authorize the formation of nonprofit corporations of the character and purpose which you describe.

I am impressed with the definition of health as set forth in two old North Carolina Supreme Court cases, Bell vs. Jeffreys, 35 N.C. 356 and Harrell vs. Norvill, 50 N.C. 29, 32, cited under the heading of Health in Vol. 19, Words and Phrases, page 157. It was stated in part as follows:

". . . in holding that myopia, or shortness of sight, in a negro slave, was unsoundness, though not unhealthiness, within the meaning of a warranty that a slave was sound and healthy, said that 'the word "healthy," in its ordinary acceptance, means free from disease or bodily ailment, or a state of the system peculiarly susceptible or liable, to disease or bodily ailments.' A defeat in the structure of the little fingers of a slave can be no more a want of soundness in health, in the ordinary acceptance of the term 'health,' than myopia, or shortness of sight"

Undoubtedly definitions of the word **health** could easily be found in opinions of the courts of last resort of all of our sister states and perhaps our own. It is my belief that cumulative definitions would be superfluous.

Although your letter suggests nothing as regards the subject of insurance, I respectfully call your attention to Section 58 - 11 - 1, N.M.S.A., 1953 Comp., and Section 58-16-1, N.M.S.A., 1953 Comp., (P.S.), respectively. While these sections have no bearing on the legality of the incorporation of a {244} nonprofit organization for pre-paid Group Visual Care, we urge upon you the advisability of clearing with the Superintendent of Insurance before you actually engage in the program suggested in your letter.

Suffice it to say that Section 51-14-22, N.M.S.A., 1953 Comp., (P.S.) supra, is ample authority for the organization of a nonprofit corporation for pre-paid Group Visual Care under the laws of the State of New Mexico.

Trusting that your question has been fully answered, I am,

Carl P. Dunifon

Assistant Attorney General