

1980 WL 121001 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 12, 1980

**\*1 Re: Opinion Request Concerning Employee Benefit Package Proposed by Michael B. Arnold**

Mr. Jack S. Folline  
Chairman  
South Carolina Board of Examiners In Opticianry  
P. O. Box 5721  
Columbia, South Carolina 29205

Dear Jack:

In a letter dated November 6, 1980, addressed to you, Howard S. Sheftman, Attorney for Michael B. Arnold, Optician, inquired whether the following plan is permissible under the terms of the South Carolina Optician's Code:

Mr. Arnold desires to solicit a business in regard to a preferred customer plan for the employees of that business for the purpose of optical wear. The employer of the business would get a benefit package for all his employees, which would entitle all employees to a discount on eye glasses or contact purchases. Mr. Arnold is also considering charging the employer a membership fee to become a member of this package.

On May 15, 1980, this office issued an opinion to you which concluded that [Section 40-37-240 of the Code of Laws of South Carolina \(1976\)](#) prohibits the offering of a discount by opticians who are licensed by your Board. The opinion noted:

In [Wagner v. Ezell, 249 S.C. 421, 154 S.E.2d 731 \(1967\)](#), the South Carolina Supreme Court, in interpreting the predecessor of [Section 40-37-240](#) which contained the identical language being discussed, held that a 'thing of value' included a discount. There, advertising under consideration included a catalogue which contained general claims of savings and the 'lowest possible prices.' [Id. at 437, 154 S.E.2d at 739](#). Also considered was the fact that the store complex under which the optician worked advertised as a discount house and emphasized this characteristic as a drawing card.

The plan outlined above would permit all of a particular business's employees to obtain a discount at the optician's place of business. The employer arranges for the discount with the optician for the benefit of its employees. However, the employees only get the discount if they go to the particular optician who has entered into the arrangement with the employer.

In light of the fact that the optician is offering a discount to certain persons, specifically those who are employed by employers who have elected to participate in the above-described plan, it is the opinion of this office that such actions on the part of the optician would contravene the provisions of [Section 40-37-240 of the Code of Laws of South Carolina \(1976\)](#).

If you have any questions concerning this matter, please do not hesitate to contact me.

Yours very truly,

Grady L. Patterson, III  
Staff Attorney

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