

1978 WL 34946 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 19, 1978

***1 RE: Wholesale and Retail Sales By the Same Optician**

Dr. David C. Lewis
President
Board of Examiners
Post Office Box 100
Abbeville, South Carolina 29620

Dear Dr. Lewis:

You have requested an opinion from this office concerning the above-captioned matter. I refer you to [section 40-37-260 of the 1976 Code of Laws of South Carolina](#). The section prohibits ‘any ophthalmic manufacturer, wholesale supply house, or any of their employees, whether licensed as an optician or unlicensed, to dispense spectacles to the public.’ The act apparently prohibits one engaged in the optical wholesale or manufacturing business from also being engaged in the retail optical business.

A wholesaler is ‘one who sells to another for resale.’ 77 C.J.S., [Sales](#) § 1, p. 582. In [Lane Distributors](#) the court declared that a corporation of independent druggists who banded together to receive the benefit of buying in large quantities was not a ‘wholesale dealer.’ The group sold exclusively to the stockholders. They did not hold themselves out to be a wholesale organization. [Lane Distributors v. Tilton](#), 81 A.2d 786, 789, 7 N.J. 349. A corporation, composed of retail store owners, is not considered to be a wholesale dealership if its purpose is only to save money by purchasing in large quantities for its stockholders only. [Jefferson Grocery Co. of Pittsburg v. School District of Pittsburg](#), 145 A.2d 720, 722, 394 Pa 110.

The designated facts in the query reveal that the Palmetto Optical Company is simply acting as a central supplier to its retail members and does not sell to the public. It sells only to the retailers within the co-operative. I conclude from these stated facts and from the cases which I cited, that the Palmetto Optical Company is not a wholesaler. Therefore, the Company is not violating [section 40-37-260 of the Code](#).

I remain,
Very truly yours,

Edwin E. Evans
Assistant Attorney General

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