

newspapers were distinguished as not a source of litter and the ordinance sustained in its applicability to other types of distributable material irrespective of content. Municipal power to prohibit distribution of other types, including the smaller-sized pamphlet, solely on the basis of their tendency to become a source of litter, is doubtful, however, in the light of the Supreme Court's great emphasis upon the vital necessity of protecting every sort of publication which affords a vehicle for expression. If the exercise of municipal power is to be constitutionally successful, it must at the least be directed to patently undesirable modes of distribution, to pamphlets or other material of obscene, offensive or dangerous character, or possibly to both. But the litigation which has so far developed on this matter of municipal control of distribution does not conclusively show that a city or state is powerless to subject the distribution of literature or the exhibition of motion pictures to a control reasonably related to the promotion of cleanliness in its physical or moral connotations.

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CORPORATIONS

LEGAL ASPECTS OF CO-OPERATIVE MEDICINE

In recent years there has been much interest in co-operative medical societies. Co-operative medicine is distinguishable from socialized medicine in that it is devoid of any financial aid from the government. It has been held legal for a nonprofit corporation to furnish members with medical services rendered by physicians under contracts with the corporation. *Group Health Association v. Moor et al.*, 24 F. Supp. 445 (July 27, 1938) noted, 7 Geo. Wash. L. Rev. 120 (1938). This case has been publicized as involving a question which has never before been decided by a court. The formation of such a society in Ohio raises legal difficulties. Several physicians may organize a partnership through which they offer their services to the members of a co-operative society. This would make possible the furnishing of specialized services. However, under such an organization there is liability on the individual physician for all acts done by a co-partner which are within the scope of the partnership contract. This may serve as a deterrent.

For the co-operative organization to incorporate would facilitate the administration of such a scheme. However, there are legal obstacles to such an organization. It is possible that the courts would hold that the corporation was engaging in the practice of medicine. Ohio G.C. 8623-3, which provides that a corporation for profit may not be organ-

ized to practice a profession, eliminates the corporation for profit from engaging in the practice of medicine. Ohio G.C. 8623-97 provides for the establishment of non profit corporations and states that such corporation may be formed for any purpose for which natural persons may lawfully associate themselves. Although natural persons may lawfully associate themselves for the purpose of practicing a profession, this section does not authorize a corporation to practice a profession. *Dworken v. Apt. House Owners Corp.*, 28 Ohio N.P. (N.S.) 115 (1930), *aff'd*, 38 Ohio App. 265, 176 N.E. 577, 34 Ohio L.R. 234, 9 Ohio L. Abs. 549 (1931). It would be impossible for the entity to obtain a certificate to practice.

The question immediately arises as to what constitutes the practice of a profession. Does a corporation engage in the practice of medicine by contracting with a physician to provide services to its stockholders? There is more case material in Ohio which concerns corporations practicing law. It has been held that a corporation, not insuring automobile owners, but agreeing to furnish, free of cost, the services of attorneys in the prosecution or defenses of claims, *etc.* rising out of the operation of automobiles, is engaging in the unlawful practice of law, which will be enjoined. *Goodman v. Motorists' Alliance*, 29 Ohio N.P. (N.S.) 31 (1931). A statement to a title holder that his title is good is the practice of law by the abstract corporation if such title is not being insured. *Land Title Abstract and Trust Co., et al. v. Dworken, et al.*, 37 Ohio L.R. 79, 12 Ohio L. Abs. 399 (1932), *aff'd*, 129 Ohio St. 23, 1 Ohio Op. 313, 193 N.E. 650 (1934). A valid distinction may be made between cases dealing with attorneys and those dealing with physicians. To authorize a corporation to practice law is perhaps to authorize the stirring up of litigation. But for a co-operative corporation to enable and encourage its members to obtain the services of a physician is desirable, for both preventive and corrective medicine are beneficial to the State. The general rule is that it is the practice of medicine for the corporation to hire physicians and make contracts with the public to furnish the services of the physicians. 1. Fletcher, *Cyclopedia of the Law of Private Corporations*, sec. 97; 6 Fletcher, *Cyclopedia of the Law of Private Corporations*, sec. 2525; 103 A.L.R. 1240. There are, however, cases which hold such not to be the practice of medicine by a corporation. *State Electro Medical Inst. v. State*, 74 Neb. 40, 103 N.W. 1078, 12 Ann. Cas. 673 (1905); *State Electro Medical Inst. v. Platner*, 74 Neb. 73, 103 N.W. 1079, 121 Am. St. Rep. 706 (1905); *State ex rel. Sager v. Lewin*, 128 Mo. App. 149, 106 S.W. 581 (1907). *State Electro Medical Inst. v. State*, *supra*, has been cited and approved by *Golding v.*

Shuback Optical Co., 93 Utah 32, 70 Pac. (2d) 871 (1937) and *People ex rel. State Board of Examiners of Architects v. Rodgers*, 277 Ill. 151, 115 N.E. 146 (1917). See *People ex rel. State Board of Medical Examiners v. Pacific Health Corporation, Inc.*, — Cal. —, 82 Pac. (2d) 429 (Sept. 2, 1938). However, a statement in *The Youngstown Park and Falls Street Railway Co. v. Kessler*, 84 Ohio St. 74, 95 N.E. 509, 36 L.R.A. (N.S.) 50, Ann. Cas. 1912B 933 (1911), seems to indicate that the Ohio court is in accord with the general rule.

It isn't essential that the corporation hire the physician. The physician might contract with the members of the corporation individually, the corporation merely acting as agent in the collection of fees resulting from the physician-patient contract. Moreover, the corporation could bargain as the agent of all of its members to obtain a schedule of fees for services rendered by the physician. It could obtain a building in which a hospital and clinic would be located. A pharmacy operated by the corporation could be established in the building. Offices could be rented to physicians. Expensive X-ray and therapeutic equipment could be owned by the corporation.

But if the corporation goes too far in what it undertakes to do it will be found to be engaging in the insurance business. This requires, in Ohio, the deposit of a bond to the state of at least one hundred thousand dollars (Ohio G.C. 9447) and other restrictions which would not attach to other methods of accomplishing the result. That the plan of operation somewhat similar to that described above does not constitute insurance is held in *State v. Universal Service Agency*, 87 Wash. 413, 151 Pac. 768, Ann. Cas. 1916C 1017 (1915). For the corporation does not guarantee to the individual that the physician will perform his contract with the individual. Such a plan as that outlined above could probably be set up in Ohio and would seem to avoid most of the difficulties described previously. See *State v. Laylin*, 73 Ohio St. 90, 76 N.E. 567 (1905). However, it is always possible to organize a mutual insurance company the control of which is in the policy holders. Policies could be issued which cover the expenses incurred in obtaining medical care. Periodical examinations could be provided for which would enable the policyholder to obtain many of the advantages which preventive medicine offers. General Code, section 669 provides that "No law of this state pertaining to insurance shall be construed to apply to the establishment and maintenance . . . of . . . hospitals for the reception and care of patients . . . nor to the furnishing of . . . such services . . . in connection with any such institution, under or by virtue of any contract made for such purposes, with residents of the county in which

such . . . hospital is located." But this statute does not seem to be broad enough to include the furnishing of medical services except as merely incidental to the hospitalization.

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COUNTIES

LIABILITY FOR PERSONAL INJURIES ARISING OUT OF LABOR DISPUTES

Plaintiff instituted an action in the Common Pleas Court of Lucas County against the County Board of Commissioners to recover damages under sections 6278 and 6281 of the General Code for alleged injuries sustained at the hands of a mob. The evidence revealed that the plaintiff answered a knock at the door of his home only to be seized, assaulted, and seriously injured. A strike was in progress at a nearby plant of the Electric Auto-Lite Company and the plaintiff had been mistaken for a strike-breaker by a group of the striking employees. The trial court ordered a juror withdrawn and dismissed the petition, which action was reversed by the court of appeals. The Supreme Court reversed the court of appeals and affirmed the trial court. *Reynolds v. Lathrop, et al., Board of Commissioners of Lucas County*, 133 Ohio St. 435, 14 N.E. (2d) 599, 11 Ohio Op. 103 (1938).

Code section 6278, on which plaintiff relied, reads in part: "A collection of people assembled for an unlawful purpose and intending to do damage or injury to anyone, or pretending to exercise correctional power over other persons by violence and without authority of law, shall be deemed a 'mob'. . . . An act of violence by a mob upon the body of any person shall constitute a 'lynching'. . . ." Section 6281 imposes liability on the county in which a person is assaulted and lynched with the maximum recovery set at five thousand dollars.

Statutes imposing liability for acts of mob violence on local governmental subdivisions can be traced back to the time of King Canute (994-1035). Reeves, *History of the English Law*, p. 30; 1 Holdsworth, *History of the English Law*, p. 11; 22 Halsbury's, *Laws of England*, p. 507. At Common Law no liability existed for either injuries to person or property. *Wakely v. Douglas County*, 109 Neb. 396, 191 N.W. 337 (1922); *Shake v. Board of Comm's of Sullivan County*, 210 Ind. 61, 1 N.E. (2d) 132 (1935); *College of Medicine v. Cleveland*, 12 Ohio St. 375 (1861); *Robinson v. Greenville*, 42 Ohio St. 625 (1885); *Phillips Sheet Tin Plate Co. v. Griffith, Admx.*, 98 Ohio