

THE RUTHERFORD INSTITUTE

Post Office Box 7482
Charlottesville, Virginia 22906-7482

JOHN W. WHITEHEAD
Founder and President

TELEPHONE 434 / 978 – 3888
legal@rutherford.org
www.rutherford.org

July 18, 2019

Via Email (kyoptometry@ky.gov and BOD@ky.gov)

Jonathan Shrewsbury, O.D.
President
Kentucky Board of Optometric Examiners
2365 Harrodsburg Road
Suite A240
Lexington, Kentucky 40504-3333

Cindy Castle
Chairperson
Kentucky Board of Ophthalmic Dispensers
911 Leawood Drive
Frankfort, Kentucky 40601

Re: Kendall Optometry Ministry, Inc. / Violation of Religious Freedom

Dear Dr. Shrewsbury and Ms. Castle:

The Rutherford Institute¹ has been contacted by Kendall Optometry Ministry, Inc. (“Ministry”), a Christian religious outreach that seeks to lift and empower the poor and homeless in Kentucky and throughout the world by providing them with free corrective lens glasses. On April 26, 2019, you sent a letter ordering the Ministry to cease and desist providing glasses to the poor and homeless asserting that this exercise of the Ministry’s religious beliefs violates state laws regulating the practice of optometry and the dispensing of corrective lenses. This order was reaffirmed in July during a meeting in which the Ministry described in detail how its Christian outreach improves the lives of the poor.

¹ The Rutherford Institute is a non-profit legal and educational organization that assists those whose civil liberties are threatened or infringed and works to safeguard the rights of all Americans.

Your demand that the Ministry cease its religious mission within Kentucky and application of the laws and regulations you are charged with enforcing imposes a substantial burden on the religious freedom of the Ministry and is not supported by any compelling governmental interest. As such, your application of those laws and regulations to the Ministry would violate Kentucky's statute protecting religious freedom, Ky. Rev. Stat. § 446.350. On behalf of the Ministry, we ask that you withdraw the demand and threat to enforce those regulations against the Ministry, its officers, agents and volunteers, and instead allow it to continue its religious and charitable mission free of the fear of being subjected to criminal prosecution, jail time and fines.

The Ministry

Kendall Optometry Ministry, Inc., is a non-profit corporation established in 2003 by Holland Kendall, a retired electrical engineer and devout Christian. The Ministry's mission is "to spread the Word of our Lord and Savior Jesus Christ . . . by providing glasses to improve the vision of people living in many underdeveloped countries" and the United States.² With the assistance of eyeglasses correcting their vision, impoverished people can read the Bible and also improve their ability to be productive members of society, raising their standard of living and eliminating the need for public assistance. Kendall started the Ministry after hearing from many homeless people that he served food to at a Louisville Baptist church that they could not see well enough to get a job.

With the help of social services agencies, the Ministry goes to the poor and homeless throughout the world and Kentucky to evaluate their need for corrective lenses and provide them with glasses that will improve their vision. It first determines a person's prescription using sophisticated equipment that accurately determines the corrective needs for each eye. Based on the measurements taken, the Ministry searches its inventory of glasses to determine what pair would be the best optical match for the person. The glasses inventory consists of both used and unused glasses, all of which have been carefully scanned with a lensometer to determine the correction properties of each lens. The Ministry has also consulted with a licensed optometrist to determine the best principles to follow in selecting glasses for each individual.

This outreach to the less fortunate is without question an exercise of the Christian beliefs of the Ministry's founders and it volunteers and furthers their dedication to the Bible's directive to help the poor. Holland Kendall's founding of the ministry was inspired by the example of Jesus, who, when encountering two blind men "had compassion on them, and touched their eyes and immediately their eyes received sight, and they followed him."³ The Ministry also follows Jesus's example as described elsewhere in the Bible: "And in that same hour he cured many of

² Kendall Optometry Ministry, Inc., "Organizational Mission Statement," <http://kendall-optometry-ministry.com/kendall-optometry/>.

³ Matthew 20:34 (King James).

their infirmities and plagues, and of evil spirits, and unto many that were blind he gave sight.”⁴
As written in the Gospel of Luke:

The Spirit of the Lord is upon me, because he has anointed me to preach the gospel to the poor; he hath sent me to heal the brokenhearted, to preach deliverance to the captives, and recovering of sight to the blind, to set at liberty them that are bruised[.]⁵

The Ministry’s Activities Are Protected By Kentucky’s Religious Freedom Law

Because the Ministry’s is acting pursuant to sincerely-held religious beliefs, it is protected by Ky. Rev. Stat. § 446.350, which provides as follows:

Government shall not substantially burden a person’s freedom of religion. The right to act or refuse to act in a manner motivated by a sincerely held religious belief may not be substantially burdened unless the government proves by clear and convincing evidence that it has a compelling governmental interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest. A “burden” shall include indirect burdens such as withholding benefits, assessing penalties, or an exclusion from programs or access to facilities.

The Ministry’s glasses distribution is motivated by the Christian beliefs upon which it was founded and that are held by those who volunteer their service to the Ministry, and so government efforts to restrict the Ministry’s work is subject to the requirements of § 446.350.

To the extent your Boards would apply state laws and regulations prohibiting the unlicensed practice of optometry or ophthalmic dispensing, as indicated in the Boards’ April 26, 2019 letter to the Ministry, the application would clearly impose a “substantial burden” on the Ministry’s freedom of religion. The state could seek an injunction to stop the Ministry’s exercise of religion, Ky. Rev. Stat. § 320.370, and could prosecute the Ministry and its volunteer and assess significant criminal penalties. *See* Ky. Rev. Stat. § 320.990 (unlicensed practice of optometry punishable as a Class A misdemeanor and a \$5,000 fine for each violation) and Ky. Rev. Stat. § 326.990 (engaging in ophthalmic dispensing punishable by up to 30 days and jail and a fine of up to \$500 per offense).

Any application of the regulations on the practice of optometry or ophthalmic dispensing that would prevent the Ministry from providing glasses to the poor and homeless would clearly be a burden on the Ministry’s religious freedom. Under § 446.350, the Boards may only do so if there is a “compelling government interest in infringing” on the Ministry’s provision of glasses.

⁴ Luke 7:21 (King James).

⁵ Luke 4:18 (King James).

There Is No Compelling Reason To Prohibit The Ministry's Provision of Glasses

Your April 26 letter to the Ministry asserted that the Ministry was in violation of a regulation⁶ that forbids the provision of glasses that are not new and made to meet an individual's personal prescription. But it should be pointed out that this regulation and the statutory authority⁷ under which it is issued apply only to limit the activities of licensed optometrists, and so would not apply to the Ministry.

Similarly, although the April 26 letter invokes the prohibition on engaging in the practice of "ophthalmic dispensing,"⁸ that prohibition also is not applicable here. The law defines the practice of "ophthalmic dispensing" as meaning "that a person prepares and dispenses lenses, spectacles, eyeglasses, or appurtenances thereto to the intended wearers on written prescriptions from licensed physicians[.]"⁹ The Ministry does not "prepare" or make the glasses it provides to the poor and homeless and so is not engaged in the practice of ophthalmic dispensing.

But more fundamentally, the Boards' actions preventing the Ministry from pursuing its religious mission to give the gift of sight to the poor and homeless by providing them with used glasses is not supported by any compelling interest in health and safety as required by Kentucky's religious freedom statute. A number of sources reject the idea that it is harmful for a person to wear glasses that deviate from the person's precise prescription. Thus, the Mayo Clinic states that "[w]earing glasses that are too strong or otherwise wrong for the eyes cannot harm an adult – although it might result in a temporary headache."¹⁰ Another doctor of optometry writes: "The wrong prescription may feel weird and it can even give you a headache if you wear them very long, but it won't damage your eyes."¹¹

Additionally, the idea that there is a compelling health and safety interest in persons having precisely the correct glasses is undercut by other aspects of Kentucky's laws on obtaining glasses. For example, Kentucky exempts from restrictions and regulations on the practice of ophthalmic dispensing "[p]ersons, firms, and corporations that sell completely assembled eyeglasses or spectacles without advice or aid as to their selection, as merchandise, from permanently located or established places of business[.]"¹² Even though "reader" glasses provide vision correction, a person may obtain readers on their own without a prescription, and nothing in the law mandates a

⁶ 201 KAR 5:120, § 6.

⁷ Ky. Rev. Stat. § 320.310(1).

⁸ Ky. Rev. Stat. § 326.030.

⁹ Ky. Rev. Stat. § 326.010(2).

¹⁰ Mayo Clinic Health System, "Myths and Facts," <https://mayoclinichealthsystem.org/locations/la-crosse/services-and-treatments/ophthalmology/myths-and-facts>.

¹¹ VSP Vision Care, "Fact or Fiction: 5 Common Eye Myths Get Debunked," <https://www.vsp.com/eyewear-wellness/eye-health/fact-or-fiction>.

¹² Ky. Rev. Stat. § 326.070(3).

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process to assure the readers precisely match the buyer's correction requirements. Furthermore, people's eye prescriptions very often change after they obtain glasses, yet there is no ban on wearing eyeglasses after a certain amount of time because of the danger that their current glasses have become incorrect.

The law and literature do not support the idea that there is a compelling health and safety interest in demanding that glasses provided to persons be new and created to match the precise prescription of the wearer. Therefore, the Boards' application of these requirements to the Ministry burdens its freedom of religion without adequate justification in violation of Kentucky's religious freedom statute.

Indeed, any interest the state may have in stopping the Ministry's provision of eyeglasses to the poor and homeless pales in comparison to the benefits provided by the Ministry. By giving the less fortunate the ability to see better, the Ministry allows them the opportunity to get a job, get off the streets and become productive citizens who are no longer dependent on government assistance. The Ministry has done this successfully worldwide for many years, and, as a matter of both law and sound policy, it should not be prevented from doing so in the Commonwealth of Kentucky.

Because the application of state laws and regulations as threatened in your letter of April 26 would violate the Ministry's right to religious freedom under Ky. Rev. Stat. § 446.350, we ask that the threat be withdrawn and that assurances be given that the Ministry will be allowed to continue its religious mission of bringing sight to the poor and homeless. Time is of the essence here because the Boards' demand that the Ministry cease activities in Kentucky prevents it from exercising its religious beliefs and prevents the poor and homeless from receiving the help they deserve. We must have a response to this letter by July 26, 2019.

Sincerely,

A handwritten signature in black ink that reads "John W. Whitehead". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John W. Whitehead
President

Cc: Holland Kendall, President (via electronic mail)
Carson Kerr (via electronic mail)
Jack Richardson, IV, Esq. (via electronic mail)