

IN RE: WHAT CONSTITUTES THE MEANING OF RETAIL DRUGGIST AS REFERRED TO IN MISSOURI STATUTES.

13140 R S Mo 1929
8.22

August 18, 1933.



Hon. Frank L. Kirtley
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

Dear Sir:

Your letter of August 13 reads as follows:

"Section 17 of Regulations 11 of the U. S. Treasury Department says in part, 'A pharmacist employed by any person other than a retail druggist may not fill a prescription for spiritous or vinous liquors * * * .

Local druggists have been advised by the supervisor of permits of district 9 at St. Louis that the interpretation of what constitutes a retail druggist must be determined by the State and the permits from that office will be issued in accordance with the State law.

"I would appreciate your opinion as to whether a retail druggist as referred to in the above section means a licensee in pharmacy, or any person who might call his place a drug store."

This department has not a copy of Section 17 of Regulations 11 of the United States Treasury Department. We note the quoted portion thereof and your statement that the Supervisor of Permits of District 9 of Saint Louis notifies you his department will accept the interpretation of what constitutes a retail druggist within the meaning of the laws of Missouri.

Section 13140, R. S. Mo. 1929, provides:

"It shall be unlawful for any person not licensed as a pharmacist within the meaning of this chapter to conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retailing, compounding or dispensing of any drugs, medicines, chemicals or poisons, or for the compounding of physicians' prescriptions, or to keep exposed for sale, at retail, any drugs, medicines, chemicals or poisons, except as hereinafter provided,
* * * *

*Licensed
as
drug*

then follow several exceptions to the above broad provision and the section then concludes as follows:

"Provided further, that nothing in this section shall be so construed as to prevent any person, firm or corporation from owning a pharmacy, drug or chemical store or apothecary shop, providing such pharmacy, drug or chemical store or apothecary shop shall be in charge of a licensed pharmacist."

The Court of Appeals decided in State v. Ryan, 217 M. A. 538, that this chapter is not repealed by Chapter 31, R. S. Mo. 1929, which is the state-wide prohibition law enacted in 1919.

Insofar as this department can ascertain, there is no specific statutory definition of what should constitute a "druggist". At one time there was a statutory definition which, this department thinks, was a sound definition. The statute containing this statutory definition of a "druggist" was enacted in 1879 (see Session Laws of Missouri, 1879, page 166.) The definition contained in that law was as follows:

"No person shall be deemed a dealer of drugs and medicines within the meaning of this chapter and as such authorized to sell or give away any intoxicating liquor as herein specified unless he shall have, or maintain

a store or known place of business, shall have complied with the provisions of the law relating to merchants' license and shall have at all times on hand at said store or place of business a stock of goods such as are usually kept in a drug store exclusive of intoxicating liquor."

This act was held to be repealed not by express enactment but by implication on account of the enactment, in 1882, of another law upon the subject of pharmacists and druggists, which the Supreme Court held in *State v. Roller*, 77 Mo. 120, repealed the act of 1879 giving the above set forth definition of a druggist. This department finds no subsequent statutory enactment carrying the above set forth definition of a druggist. Webster defines a druggist as "one whose occupation is to buy and sell drugs without compounding or preparation." This definition is the ordinary English language acceptance of what constitutes a druggist, and you will observe the word "druggist" is much narrower than the word "apothecary" in the ordinary acceptance; but in our statutes, under some circumstances and some sections thereof, the words "apothecary" and "druggist" seem to be used synonymously.

In *State v. O'Kelley*, 258 Mo. 345, Division No. 1 of the Supreme Court held defendants' partners in a pseudo drug store, not having a pharmacist's license and having no licensed pharmacist in their employe were not druggists within the meaning of the statutes under which defendants were indicted. In 19 C. J., title "druggist" page 770, the druggist is defined as follows:

"A person who deals in drugs and medicines."

The term includes proprietors of a drug store. For this definition, the case of *State v. Clinkenbeard*, 142 M. A. 146 was cited. And in *State v. Chipp*, 121 M. A. 556, it is held that in American the word "druggist" is synonymous with the words "dealer in drugs." Under some provisions of the Missouri Statutes, according to the above section, one must either be a licensed pharmacist (see *State v. O'Kelley*, 258 Mo. 345) or have a licensed pharmacist in his employe; while under other Missouri Statutes, one would be held to be a druggist even if he is not a licensed pharmacist and has no licensed pharmacist in his employe. An

An examination of these cases discloses the difference in the statutes on which these decisions were made. For instance, in the last named case, State v. O'Kelley, defendants were indicted and convicted for violation of the Local Option Law in Dade County, Missouri. They were partners in business and had a drug store and neither had a license as a pharmacist, nor did they have a licensed pharmacist in their employe. Dr. E. Spyers, a retired physician, having no license as a pharmacist, was employed by defendants. A sale was made of a quart of whiskey under what defendants claim was a prescription written by a retired physician, signed "E. S., M. D., No. --- Date 4-15." The sale was made by O'Kelley. Any sale of intoxicating liquor, except on prescription by physician under the local option law in said county was a misdemeanor. The court held that as neither was a pharmacist nor did they have a licensed pharmacist in their employe, and as they were conducting what they claimed to be a drug store that they were guilty of violating the Local Option Law and that they were not druggists.

In the case of State v. Chipp, 121 M. A. 556, the defendants were indicted and convicted under Section 3051, R. S. Mo. 1899, which provided, "Any druggist or dealer in drugs and medicines who shall suffer alcohol or intoxicating liquor to be drunk at or about his place of business shall be guilty of a misdemeanor and upon conviction shall be punished by fine and imprisonment, etc." It will be noticed that this Statute uses the words "any druggist or dealer in drugs." The State contended that a dealer in drugs need not be a druggist, while defendant contended that a dealer in drugs and druggist meant the same thing and that the terms were synonymous. The Court said, "we find no difficulty in arriving at the conclusion that an individual may be a druggist or a dealer in drugs without being or having in his employe a pharmacist." This finding, of course, was based upon the statute which made it illegal for any dealer in drugs, regardless of whether he was a pharmacist or had a pharmacist in his employe to suffer alcohol or intoxicating liquor to be drunk at or about his premises.

You will observe, the proviso to Section 13140, R. S. Mo. 1929, authorizes any person, firm or corporation to own a pharmacy, chemical store or apothecary shop, provided it is in charge of a licensed pharmacist.

Considering this statutory law and the court decisions thereon, this department is of the opinion that

insofar as the sale of intoxicating beverages, upon a prescription by a registered physician is concerned, one who sells drugs at retail cannot fill a prescription by a physician for a medical use and sell the intoxicating beverage therefor, unless either the proprietor of the store has a pharmacist's license or has in his employe a registered and licensed pharmacist. Insofar as the illegal sale of intoxicating liquor is concerned, the laws of the state may be violated either by one not having a pharmacist's license, or one running a drug store without having a pharmacist's license or having in his employe a licensed pharmacist under the different provisions of the Statutes of Missouri.

In conclusion, it is the opinion of this department that the definition of the term "druggist", as used in the various provisions of the Statutes of Missouri, may be somewhat different owing to the varying provisions of different sections of the Statutes which constitute offenses under the laws against the illegal sale of liquor.

Respectfully submitted,

EDWARD C. CROW
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK
Attorney-General.

ECC/AJ