

Food and drugs, patent and proprietary medicines may be sold  
in places other than pharmacies and drug stores.

73,140 RS Mo 1929

April 11, 1933

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38

Honorable T. J. Harper  
Prosecuting Attorney  
Stone County  
Galena, Missouri

Dear Sir:

We are in receipt of your letter of April 8, 1933 requesting  
an opinion, and same being as follows:

"Relative to the question asked by this office  
of March 29th /33. I will again try to make  
myself plainer.

"Can a manufacturer of pharmaceutical preparations-  
through agents, sell remedies in this state-out  
side of drug stores-in places where there are  
no druggists, if the labels are given the names  
of the drugs, and amounts of the ingredients  
it is composed of, and the ailments it is recomm-  
ended for. according to accepted medical and  
pharmaceutical practice."

In other words are there any legal restrictions,  
or any registration the statutes referred to in  
your letter covers the law as to misbranded or  
adulterated medicine. but does not cover the  
rights of the manufacturer of permitted remedies."

Section 13140 R. S. Mo. 1929, regulates the sale of  
drugs, medicines, chemicals and poisons. Said section provides among  
other things as follows:

"It shall be unlawful for any person not  
licensed as a pharmacist within the meaning  
of this chapter to conduct or manage any  
pharmacy, \*\*\*or for any person not licensed  
as a pharmacist or assistant pharmacist with-  
in the meaning of this chapter to compound,  
dispense or sell at retail any drug, chemical,  
poison or pharmaceutical preparation upon the  
prescription of a physician or otherwise,\*\*\*\*"

This section also has the following exception:

"Provided, however, that nothing in this section shall be so construed as to apply to the sale of patent and proprietary medicines,\*\*\*"

It will be seen that the above section makes it unlawful to compound, dispense or sell at retail any form of pharmaceutical preparations upon the prescription of a physician or otherwise. However, if preparations and remedies are patent and proprietary medicines then same may be sold in places other than in drug stores.

We assume from the context of your letter that you have used the words "pharmaceutical preparations" in the wrong sense and that you mean patent or proprietary medicines, and this opinion is given with that assumed premise.

Sections 13007 and 13008 R. S. Mo. 1929, confers upon the Food and Drug Commissioner authority to condemn any drug which he might find is adulterated or misbranded or is a substitute or imitation.

Section 13017 R. S. Mo. 1929 defines the word drug as follows:

"The term 'drug' as used in this article, shall include all medicines and preparations recognized in the United States pharmacopoeia or national formulary for external or internal use, and any substance or mixture of substance intended to be used for the cure, mitigation or prevention of disease in man or animals."

Section 13012 provides:

"It shall be the duty of the food and drug commissioner to inspect all places where food products or drugs are manufactured or are kept for sale, and prescribe rules and regulations for the sanitary conditions of such factories and places where food products and drugs are kept for sale,\*\*\*"

It is our opinion that patent and proprietary medicines may be sold in places other than drug stores, but "said medicines" are regulated by the food and drug commissioner for adulteration, misbranding, substitution or imitation and sanitation. If the preparations are prepared for immediate use by the public, put up in

Hon. T.J. Harper

-3-

April 11, 1933

packages or bottles, properly labeled with the name, and accompanied with wrappers containing directions for use, and the conditions for which it is a specific then they may be sold in places other than in drug stores, provided the place where sold is in a sanitary condition.

State v. Donaldson et al, 43 N.W.  
l.c. 783-784.

Trusting that this answers your inquiry. We are

Yours very truly,

JAMES L. HORNBOSTEL  
Assistant Attorney General.

APPROVED

ROY McKITTRICK  
Attorney General.

JLN:MM