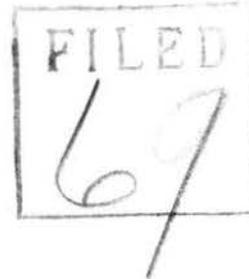


DENTISTS - Without authority to write pre-
INTOXICATING LIQUORS - scriptions for intoxicating liquors.

9-12

September 7, 1934



Honorable John B. Owen
Prosecuting Attorney
Henry County
Clinton, Missouri

Dear Sir:

We have your request for an opinion upon
the following matter:

"Can a dentist in your opinion
prescribe for medicinal purposes
intoxicating liquor."

We call your attention to Chapter 106 R. S.
Mo. 1929 regulating the practice of dentistry in this
state. The only statute therein we find dealing with
the right of a dentist to issue a prescription is in
the form of an authorization that druggists may fill
such prescription. Section 13579 is as follows:

"Legally licensed druggists of
this state may fill prescriptions
of legally licensed dentists of
this state for any drug necessary
in the practice of dentistry."

It will thus be noted that under the State
Dental Act the authority of druggists to fill pre-

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scriptions of dentists is confined to drugs.

The 1933 Legislature, in dealing with intoxicating liquors, Laws 1933, p. 277, Section 4486, provided:

"It shall be lawful for any registered pharmacist engaged in the retail drug business or employed as a pharmacist in any retail drug store in this state to fill any prescription of any reputable physician licensed to practice medicine and surgery in this state, prescribing for the person named in such prescription any distilled, spiritous, vinous, fermented or other alcoholic liquor."

It will be noted in the above section that the prescriptions for intoxicating liquors are to be issued by a physician licensed to practice medicine and surgery in this state. We are confronted with the proposition of whether or not a dentist is such a physician. An examination of Chapter 53, R. S. Mo. 1929 relating to medicine and surgery, will reveal that dentists are not therein included.

The Supreme Court of Missouri en banc, State ex rel. Flickinger v. Fisher (1893), 119 Mo. 344, had before it for construction a statute exempting persons from jury service, among which exemptions were:

"a practitioner of medicine and surgery in any of their departments."

The contention made was that a dentist was a practitioner of medicine and surgery. In denying such contention and in holding that a dentist then was subject to jury service, the court said: l.c. 353,

"Relator evidently feels unsteady on his logical legs if his sole reliance is to be on the statutory exemptions heretofore noted, and so he resorts to the lexicographers, and quotes from the Century Dictionary, where 'Dentist' is thus defined: 'One whose profession it is to clean and extract teeth, repair them when diseased, and replace them when necessary by artificial ones; one who practices dental surgery and mechanical dentistry; a dental surgeon.' If relator had delved more deeply into the science of definitions, and had turned another page of the same work, he would have found 'Chiropodist. One who treats diseases or malformations of the hands or feet; especially a surgeon for the feet, hands and nails; a cutter or extractor of corns and callosities; a corn doctor.' So that if relator is exempt from jury duty because, as he says, he 'treats professionally diseases of the oral cavity,' so, also, is his less pretentious professional brother, who, with equal scientific skill, treats diseases or malformations of the hands or feet, and who is content to be dubbed 'corn doctor.' Certainly the argument and the definition which would support the exemption of the dentist as a 'practitioner of medicine and surgery,' would also equally support that of his cognate scientist, albeit of humbler professional pretensions.

The disposition of persons to magnify and exalt their callings or occupations has become wonderfully prevalent in these latter days. He who shoves a jackplane and wields a saw is no longer a 'carpenter,' but an 'architect and builder;' the solicitor of orders from our retail merchants

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is no longer a 'drummer,' but a 'commercial traveler;' and the loquacious individual who scrapes your chin is no longer a 'barber', but a 'tonorial artist.' "

The above interpretation of the jury statute was followed in construing a similar statute in Michigan, *People v. DeFrance* (Mich. 1895) 22 L.R.A. 139.

The special session of the Legislature, Laws Mo. Special Session 1933-34, p. 79, Sec. 4, attempted to go into this matter further, and, among other things, provided:

"*provided further, that nothing in this act shall be construed as limiting the right of a physician to prescribe intoxicating liquor in accordance with his professional judgment for any patient at any time, or prevent a druggist from selling intoxicating liquor to a person on prescription from a regularly licensed physician as above provided."

From the above utterance, last and point of time of the Legislature, the authority to issue prescriptions for intoxicating liquor is limited to the general class known as "physicians". This identical question was raised in *State v. McMinn*, 24 S. E. 523 wherein the laws of North Carolina, provided a separate governing act for dentists and a separate governing act for physicians and surgeons such as we have in this state at this time. In holding that a dentist is not a physician authorized to issue prescriptions for intoxicating liquor, the Supreme Court of North Carolina, l.c. 524, said:

"If dentists come within the term 'physician,' as used in Code, Sec.

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1117, 'toothache' would become more alarmingly prevalent than 'snake bite'; and that it would, with usage, become more dangerous, is evident from the fact that the very first dental surgeon's prescription for toothache, coming before us, is for 'one pint of whiskey.' The size of the tooth is not given, nor whether it was a molar, incisor, eye tooth, or wisdom tooth; and yet there are 32 teeth in a full set, each of which might ache on Sunday. The duties of a dentist are limited to the 'manual or mechanical operations' on the teeth. Whenever the use of liquor is necessary, it being a remedy to act on the body, and only indirectly in any case for the teeth, within the purview of the statute, it must be prescribed by a 'physician', to authorize a sale on Sunday."

It is, therefore, the opinion of this office that a dentist is not authorized to write prescriptions for intoxicating liquors.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
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