

DRUGGISTS OR PHARMACISTS:) After failure of two (2) years
BOARD OF HEALTH:) to renew druggists' or pharmacist's
1 license, such person stands in same
status as original applicant.

4-9
March 27, 1934.



W. F. Schlicht, M. D.
Niangua, Missouri

Dear Dr. Schlicht:

This is to acknowledge your letter of the 24th inst.,
as follows:

"I wish to ask you for your opinion on
the following question:

I have a druggist in my district who
was a registered pharmacist. He became
unable during a period of sickness to
pay his annual fees to the state phar-
macy board for twelve years. Now he
wishes to re-instate by paying up his
back fees for the past twelve years.
Is it permissible for him to re-instate
or not? As he wishes to operate a
drug store in my territory I would like
an opinion on this question at a very
early date."

Chapter 94, R. S. No. 1929, regulates druggists and
pharmacists. Section 13140 of said chapter provides in part
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, drug or chemical
store, apothecary shop or other place
of business for the retailing, compound-
ing 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, * * * * *

And it shall be unlawful for any owner or manager of a pharmacy or drug store, or other place of business, to cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense or sell, at retail, any drug, medicine or poison, except as an aid to or under the supervision of a person licensed as a pharmacist or assistant pharmacist."

The above statute exempts legally registered practitioners of medicine or dentistry in the compounding or dispensing of their own prescriptions; also patent and proprietary medicines in localities where there is no licensed pharmacist or assistant pharmacist; and the ordinary household remedies, drugs or medicines, as may be specified by the board of pharmacy, which are usually sold by those engaged in the sale of general merchandise. This statute further provides that a corporation may own a drug or chemical store.

Section 13141 of the same chapter provides in part as follows:

"Every person now licensed or registered as a pharmacist under the laws of this state shall be entitled to continue in the practice of his profession until the thirty-first day of December, 1909, and after such date shall be entitled to renewal of his license under the provisions of this chapter upon the presentation of an application for such renewal. Etc."

Section 13142 provides the qualifications of pharmacists.

Section 13143 provides when, and under what circumstances, the board of pharmacy may refuse to grant or revoke a license and the procedure for applicant to appeal from such ruling.

Section 13145, which we believe is decisive of your inquiry, provides in part as follows:

"* * * * * Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of this profession shall, within thirty days next preceding the expiration of his license or permit, file with the board an application for the renewal thereof, * * *. If the board shall find that the applicant has been legally licensed in this state and is entitled to a renewal of license, * * *, it shall issue to him a certificate attesting that fact. If any pharmacist, * * * shall fail, for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacists, * * *, and such person, in order to again become registered as a licensed pharmacist * * * shall be required to pay the same fee as in the case of original registration: Provided, that no application for the renewal of a license shall be granted after a period of two years after its expiration, and if any pharmacist * * * fail within that time to make application to the board for a renewal of his license, he shall be subject to all of the provisions of this chapter regulating the issuance of licenses. Etc."

Thus, Section 13145, supra, provides that if one fails to renew his license for a period of two years after its expiration, then for him to obtain its renewal he is subject to the provisions of this chapter regulating the issuance of licenses.

Section 13142, supra, provides in part as follows:

"In order to be licensed as a pharmacist within the meaning of this chapter, an applicant shall be not less than twenty-one years of age, * * * *, and he shall present to the board satisfactory evidence that he has had four years' experience in pharmacy under the instruction of a licensed pharmacist, and shall pass a satisfactory examination by or under the direction of the board of pharmacy: Provided, that if the applicant for a license as a pharmacist be a graduate of a school or college of pharmacy, whose requirements for graduation are satisfactory to and approved by the board of pharmacy, it shall not be required that he pass any examination or that he shall have been an assistant pharmacist. Etc."

In your letter you stated that the person desiring reinstatement has not practiced pharmacy for twelve years. In other words, no renewal license has been issued to him for a period of twelve years and he wishes to reinstate by paying up back fees for the years he failed to renew. The payment of a renewal fee is incidental to the practice of pharmacy and the charge made is a fee payable to the board.

In *De Gruy v. Louisiana State Board of Pharmacy*, 141 La. (Sup. Ct.) 896, 75 So. 835, l. c. 836, the court had this to say relative to the charge made for the renewal of license:

"And our opinion is that the plaintiff is mistaken in assuming that this charge of \$1 to be paid annually by every registered pharmacist and qualified assistant, for the renewal of his certificate, is a license tax. It is a fee charged for a service rendered in protecting, not only the public against the malpractice of pharmacy,

but the profession of the pharmacists themselves against impostors. The levying and collecting of this fee of \$1 annually from every registered pharmacist and qualified assistant is not done in the exercise of the taxing power of the state, but in the exercise of the police power. The purpose of the charge is not to derive a revenue, but to pay the expense of carrying on the police regulation provided by the statute. It is true the labor of issuing the renewal certificate is, of itself, not worth \$1, or does not cost the board \$1. But the functions of the board are something more than swapping dollars. The dollar collected annually from every registered pharmacist and qualified assistant, in consideration for the renewal of his certificate, is expended not only for maintaining the office of the board and paying for the clerical work, but also for investigating complaints against and correcting the evil practice of having nonregistered, nonqualified, and incompetent persons compounding dangerous drugs. The regulation of matters of such vital importance to the health and safety of the public as that is surely within the police power of the state. The evidence shows that the board needs, for carrying on the work for which this fee is collected annually from every registered pharmacist and qualified assistant, every dollar collected, and more."

Thus, the payment of the fee is a condition precedent to the obtaining of the license. And, if one does not file his application for renewal and pay the required fee, then after sixty days his name is erased from the register of licensed pharmacists (Section 13145); and if one does not file an application for renewal of a license within two years after its expiration, then such person would stand in the same class as

one who never held a license. In other words, the status of the person stated in your letter is the same as one who has never held a license and in order for him to practice the profession of pharmacy he would have to take the same steps as one who had never been licensed, and such is our opinion.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:EG

cc - State Board of Health