

POISONS: Record of sale of poisonous substances used in the arts or as insecticide, not necessary.

April 29, 1943.



Mr. Ted D. Willard, Secretary  
State Board of Pharmacy  
Candenton, Missouri

Dear Mr. Willard:

The Attorney-General wishes to acknowledge receipt of your letter of April 27th requesting an opinion of this Department. Your letter of request reads as follows:

"Section 10018 of Chapter 60 of the Revised Statutes of Missouri, 1939, provides, in part:

"\* \* \* \* Nor shall it be lawful for any registered pharmacists, to sell any poisons included in schedule 'A' without, before delivering the same to the purchaser, causing an entry to be made in a book kept for that purpose, stating the date of sale, name and address of purchaser, the name of poison sold, the purpose for which it was represented by the purchaser to be required and the name of the dispenser.'

"Section 10005, further provides, in part:

"nor with the sale of poisonous substances which are sold exclusively for use in the arts, or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word poison and the names of at least two readily obtainable antidotes.'

"The Board of Pharmacy would like to know if in your opinion a record of the sale of arsenic and its preparations must be kept by stores other than drug stores and pharmacies who are offering these poisons for sale as insecticides and in the event such a record is required whose duty is it to enforce this portion of the Statutes?"

Chapter 60 of the Revised Statutes of Missouri for 1939, is entitled "Druggists and Pharmacists -- State Board of Pharmacy." The purpose of this chapter is primarily for the regulation of persons engaged in that particular occupation. An examination of Section 10005, R. S. Mo. 1939, contained in the above named chapter, will show that its primary object is to prevent a person engaged in the drug business from compounding, dispensing or selling at retail, any drug, medicine or poison, except under the supervision of a person licensed as a pharmacist. The effect of this section is, that a registered pharmacist may prepare and compound medicines and other preparations containing the various forms of poison, and in so doing is necessarily given the authority and permission to "break" the original package in which he receives such poison. It is, we think, apparent that this right to use poisons in compounding medicines and other preparations which is given to the registered pharmacists, is one of the reasons for the stringent rules as to the qualifications of persons engaging in that profession.

However, the statutes setting up the right of the Board of Pharmacy to examine applicants for this type of work, is not the only safeguard to the general public. Section 10018, R. S. Mo. 1939, further provides that no registered pharmacist shall sell or dispense any poisons designated in such section (one of the poisons being arsenic, with which we are concerned in this instant opinion) unless he keep a record in a book kept for such purpose, setting out certain facts relative to such sale, as set out in Section 10018, supra.

Now the question arises as to whether or not such a record shall be kept in the case of poisonous substances sold

exclusively for use in the arts, or for use as insecticides. It will be noted, from the portion of Section 10005, quoted in your request, that these substances must be sold in "unbroken" packages bearing a certain type of label, and thus negatives the right of a person not a registered pharmacist, from mixing and compounding such poisonous substances.

It will further be seen that the sale of poisonous substances to be used in the arts and for insecticide, is specifically exempted from the provision requiring that anyone compounding or selling at retail any poison, must be a registered pharmacist or under such pharmacist's supervision. In construing statutes, it is always important that the intention of the Legislature in the enactment of such statutes, be ascertained if possible. The Supreme Court in the cases of *City of St. Louis v. Senter Commission Co.*, 85 S. W. (2d) 21, 337 Mo. 238, and *Graves v. Purcell*, 85 S. W. (2d) 543, 337 Mo. 574, held that the primary rule of the construction of statutes is to ascertain and give effect to the lawmakers intent, and this should be done from the words used, considering the language honestly and faithfully. Obviously, the intent of the Legislature in passing section 10005, supra, was that the sale of poisonous substances in an unbroken package for art work or for use as an insecticide, was not to be included in the regulation requiring that the sale of drugs, medicine and poisons at retail be under the supervision of a registered pharmacist.

Again invoking the rule of construction stated above, we call your attention to Section 10018, supra. This, in part, provides that "registered pharmacists" can not sell certain poisons, among them arsenic and its preparations, unless a record is kept in a certain manner. This provision is clearly unambiguous, and considering the language "honestly and faithfully," as we are admonished to do by the Supreme Court, we can not say that it is necessary for persons who sell poisonous substances for use in art work or for insecticides, to be compelled to keep a record as required by registered pharmacists in the sale of certain poisons, as required by Section 10018, R. S. Mo. 1939.

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Conclusion

Therefore, it is the opinion of this department that the keeping of records of sales of certain poisons, as required in Section 10018, supra, does not apply to the sale of poisonous substances sold for use in art or as an insecticide, when sold in unbroken packages.

Respectfully submitted,

JOHN S. PHILLIPS  
Assistant Attorney-General

APPROVED:

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ROY MCKEETICK  
Attorney-General

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