

PHARMACY: Person engaged exclusively in wholesale drug business is required to be registered pharmacist, or have registered pharmacist in his employ when he compounds or dispenses drugs in connection with his business.

April 17, 1945



Mr. Alfred Page
Assistant Prosecuting Attorney
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Springfield, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion, under date of April 9th, 1945, which request reads as follows:

"This office has been somewhat confused in the interpretation of Section 10005 R. S. Mo. 1943, relating to druggist and pharmacist. The particular clause in question is as follows:

'Provided, however, that nothing in this section shall be construed to interfere with any legally registered practitioner of medicine or dentistry in the compounding or dispensing of his own prescriptions, nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist or who shall keep in his employ at least one person who is licensed as a pharmacist.'

"The particular clause giving the trouble is the portion underscored.

"We have no trouble interpreting the quoted portion concerning the wholesaler who has in his employ a registered pharmacist. The

question is whether or not the section as a whole would be construed to prohibit a wholesaler from conducting his business as a wholesaler without being himself a pharmacist, or without having in his employ a registered pharmacist.

"It has appeared to us that a wholesaler is immune from prosecution even though he does not have in his employ a registered pharmacist, provided he does not sell at retail.

"We shall be glad to have your opinion because there is a wholesale druggist who is not a pharmacist operating in this city who does not have in his employ a registered pharmacist."

Section 10005, R. S. Mo. 1939, makes it unlawful to conduct a drugstore except under certain conditions. Section 10005 provides 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, 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, or for any person not licensed as a pharmacist within 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, or to compound physicians' prescriptions, except as an aid to or under the supervision of a person licensed as a pharmacist under this chapter. 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 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: Provided, however, that nothing in this section shall be construed to interfere with any legally registered practitioner of medicine or dentistry in the compounding or dispensing of his own prescriptions, nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist or who shall keep in his employ at least one person who is licensed as a pharmacist, * * *"

(Emphasis ours.)

Section 10022, R. S. Mo. 1939, provides for the penalties applicable to violations of Section 10005. Section 10022 provides as follows:

"Whoever, not being licensed as a pharmacist, shall conduct or manage any drug store, pharmacy or other place of business for the compounding, dispensing or sale at retail of any drugs, medicines or poisons, or for the compounding of physicians' prescriptions, contrary to the provisions of Section 10005 of this chapter, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars, and each week such drug store or pharmacy or other place of business is so unlawfully conducted shall be held to constitute a separate and distinct offense. Whoever, not being licensed as a pharmacist, shall compound, dispense or sell at retail any drug, medicine, poison or pharmaceutical preparation, either upon a physician's prescription or otherwise, and whoever

being the owner or manager of a drug store, pharmacy or other place of business shall cause or permit any one not licensed as a pharmacist to dispense, sell at retail, or compound any drug, medicine, poison or physician's prescription, contrary to the provisions of Section 10005 of this chapter, shall be deemed guilty of misdemeanor, and upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars. * * * * *

(Emphasis ours.)

The word "retail" involves the opening of the ultimate original package and the dividing of its contents in connection with the ordinary dispensing or compounding of medicines, and the word "retail" need not be interpreted in connection with the words "compounding or dispensing" on the principle of noscitur a sociis. The three words have three separate meanings; at least, the word "retail" differs radically in meaning from the other two words of the collocation, and has additional meaning. "Retail" is differentiated from "wholesale," as it was held in *Veazey Drug Co. v. Bruza*, 37 Pac. (2d) 294, 169 Okla. 418, that "a 'wholesale dealer' is one whose business is the selling of goods in gross to retail dealers, and not by the small quantity or parcel to consumers thereof." On the other hand, dispensing and compounding requires the experience and skill of a registered pharmacist, or at least the dispensing and compounding should be under the supervision of a registered pharmacist. The general purpose of the Act which we are construing is to prevent the conduct of 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, except by pharmacists or under the supervision of a person licensed as a pharmacist.

At common law the retailing of medicines was not a crime, and, so far as the State of Missouri is concerned, only Sections 10005 and 10022, R. S. 1939, that we are considering, make the action of retailing, compounding or dispensing of any drugs, medicines, chemicals or poisons by others than a registered pharmacist or under the supervision of a registered pharmacist, criminal in nature.

The general rule for the construction of penal statutes is that they should be construed strictly, and not extended by implication; where the statute is made for the public good, although it be penal, it should receive an equitable construction.

The New York City Consolidation Act of 1882 (Chap. 410, Sec. 2015) uses almost the same language as the statute in question, embodying the words "retailing, dispensing or compounding medicines or poisons." The case of *The People v. Rontey* (21 N. Y. St. Repr. 173) was an appeal from a conviction under that act, and the court (at page 177), in affirming the conviction, said:

"The statute was in the nature of a police regulation, aimed at greater safety to the people by requiring that drugs should be dispensed only by experienced persons, to whom alone that duty should be assigned, and who alone should be permitted to discharge it. The appellant, therefore, was not justified in openly disregarding the provisions of the statute, which required important and substantial forms to be observed before attempting to sell drugs and medicines. Public safety must be regarded as superior to any private rights, and his business must yield to the necessities recognized by proper legislation."

It makes little difference, under these decisions, whether the statutes be construed strictly or equitably, because, if the dealer is engaging exclusively in wholesale business and compounds or dispenses any drugs, medicines, chemicals or poisons without being himself a registered pharmacist or maintaining in his employ at least one person who is licensed as a pharmacist, he does so in violation of Sections 10005 and 10022, R. S. Mo. 1939, quoted above.

CONCLUSION

It is, therefore, the opinion of this Department that a dealer, who is not a registered pharmacist or does not

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have a registered pharmacist in his employ, who engages exclusively in the wholesale drug business, and, in connection with that business compounds or dispenses any drugs, medicines, chemicals or poisons, is guilty of a misdemeanor under the provisions of Sections 10005 and 10022, R. S. Mo. 1939.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

AVO:CF