

HEALTH: Section 9917, R.S. Mo. 1939, is in full force and effect, and it is the duty of the Bureau of Food and Drugs to enforce said section.

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C. F. Adams, M. D.
Acting Director
Division of Health
Jefferson City, Missouri

Dear Sir:

We have your recent letter requesting an opinion from this office. Your letter is as follows:

"We would like to have an official opinion on the following question: Is Section 9917 of the Rev. Statutes of Missouri, 1939, in force at the present time, and if so, is the Bureau of Food and Drugs responsible for the enforcement of this section?"

The first question is whether Section 9917, Article 5, R. S. Mo. 1939, is still in effect. Section 9917 is still in full force and effect, having never been repealed directly or by implication. That section is as follows:

"No person shall sell or offer for sale any flour, meal, grits or hominy, made from the admixture or adulteration of grains, unless there shall have been first branded upon each of the barrels or packages containing the same, the kind of grains composing said admixture, the quality and weight thereof, and the name and place of business of the person manufacturing the same: Provided, always, that the admixture of the several grades or kinds of wheat shall not be construed to be mixed or adulterated grains."

Section 9922, R. S. Mo. 1939, provides:

"Any person doing any of the acts in this article (Article 5) prohibited, or omitting to do any of the acts hereby commanded, shall be guilty of a misdemeanor, and for each and every offense shall be punished

by a fine of not less than twenty nor more than two hundred dollars, one-half of which shall be paid to the person who shall be named as prosecuting witness."

Your next question is whether the Bureau of Food and Drugs is responsible for enforcement of Section 9917, supra.

Section 9759.1, Laws of Missouri, 1945, page 945, provides for the establishment of the Department of Public Health and Welfare, and further provides: "The department of public health and welfare shall be composed of three divisions, namely: the division of health, the division of mental diseases, the division of welfare."

Section 9759.6, supra, provides, in part, as follows: "It shall be the duty of the governor * * * to appoint a director for each of the three divisions of the department of public health and welfare."

Section 9759.15, supra, provides, in part, as follows: "The division of health shall maintain * * * a bureau of food and drug inspection, * * *"

Section 9759.22, supra, entitled "Bureau of Food and Drug Inspection," is as follows:

"All powers and duties heretofore exercised by the state board of health pertaining to administration of acts relating to food and drugs shall be exercised by the division of health. In all laws of Missouri and in orders and findings thereunder, wherever the words 'food and drug commissioner' are used, they shall hereafter refer to and be understood to mean the director of health. Said director shall have power to appoint a deputy who, under the director, shall be chiefly responsible for administration of laws pertaining to food and drugs, and particularly to enforce all laws that now exist or that may hereafter be enacted regarding the production, manufacture or sale of any food products, or any ingredients that are used in the preparation of foodstuffs, or the misbranding of the same; and personally, or by his assistants, inspect any article of food or drug made or offered for sale in

this state which he may, through himself or his assistants, suspect or have reason to believe is impure, unhealthful, adulterated or misbranded, and shall have power to cause to be arrested and prosecuted, any person or persons engaged in the manufacture or sale of foods or drugs or any food ingredients contrary to the laws of this state. Said director shall make orders and findings for carrying out the provisions of this article and such orders and findings shall conform as nearly as practicable to the orders and findings at present established or which may hereafter be established for the enforcement of the Act of Congress, approved and known as the Food and Drug Act, together with any amendments thereto."

That part of Section 9759.22, supra, which provides, "said director shall have power to appoint a deputy who, under the director, shall be chiefly responsible for administration of laws pertaining to food and drugs," clearly fixes on the Director of the Division of Health the ultimate responsibility for the enforcement of the Food and Drug laws. However, Section 9759.22, supra, by its title recognizes that the Director will perform the duty of enforcing the Food and Drug acts through a "bureau of food and drugs." The latter is not, by the plain intendment of the statute, to be considered an independent administrative unit, but is subject to the general direction and control of the Director of the Division of Health. Therefore, the Division of Health is actually responsible for the enforcement of the Food and Drug laws, but through its Bureau of Food and Drugs, and deputy thereof, is by statute directed to perform the administrative duties relating to the Food and Drug laws.

Section 9759.22, supra, clearly applies to Section 9917, supra, particularly that part of Section 9759.22 as follows:

"and particularly to enforce all laws that now exist * * * regarding the production, manufacture or sale of any food products, or any ingredients that are used in the preparation of foodstuffs, or the misbranding of the same." (Underscoring ours.)

C. F. Adams, M. D.

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CONCLUSION

It is the opinion of this office that Section 9917, R. S. Mo. 1939, and its accompanying penalty provision, Section 9922, R. S. Mo. 1939, are still in full force and effect, and that it is the duty of the Bureau of Food and Drugs to enforce Section 9917 as provided in Section 9759.22, Laws of Missouri, 1945.

Respectfully submitted,

H. JACKSON DANIEL
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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