

AGRICULTURE: If a person employed by a serum company  
STATE VETERINARIAN: receives in fact compensation for the  
VETERINARIAN: administration of anti-hog cholera serum--  
virus and/or vaccines to swine, as dis-  
tinguished from compensation for the sale  
thereof, he would be practicing "veterinary medicine" and required  
to procure a license under the provisions of Chapter 340, RSMo  
Cumulative Supp., 1953.

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July 21, 1954

L. A. Rosner, DVM  
State Veterinarian  
Department of Agriculture  
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion,  
which request reads in part as follows:

"The question has been asked \* \* \* as to whether or not the veterinary practice act as contained in Section 2, subsection 1 of Senate Bill 354 as passed by the 67th General Assembly would apply to those individuals employed by the company who are engaged in the administration of anti-hog cholera serum-virus and/or vaccines to swine. Presumably the livestock owner is charged only for the serum.

"It is quite possible that these men receive their remuneration in the form of a commission which would represent the difference between the wholesale and retail price of the product used. I should like your opinion on the basis of whether or not the law applied where the individual was working on a commission basis and where the individual was strictly in the employ of the company and received a specified salary only for his work in connection with the administering of the product."

Senate Bill 354 as enacted by the 67th General Assembly relating to the licensing of persons practicing veterinary medicine is found in Chapter 340, RSMo Cumulative Supp., 1953.

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Section 340.010 defines the term "veterinary medicine" in the following language:

\* \* \* \* \*

"(3) 'Veterinary medicine,' the practice of alleviating, rectifying, curing or preventing any injury, disease, deformity or physical condition of animals other than human beings and shall include the diagnosing of any affliction, the dispensing or administration of any medicine, appliance, treatment or operation, or the advising, recommending or prescribing the administration or use of any medicine, appliance, treatment, course or program of treatment, or operation on any such animal."

Section 340.020 provides that it shall be unlawful for any person not licensed as a veterinarian to practice veterinary medicine for a valuable consideration. Said section provides in part as follows:

"It shall be unlawful for any person not licensed as a veterinarian under the provisions of this chapter to practice veterinary medicine or to do any act which requires knowledge of veterinary medicine for valuable consideration or for any person not so licensed to hold himself out to the public as a practitioner of veterinary medicine by advertisement, the use of any title or abbreviation with his name, or otherwise; except that nothing in this chapter shall be construed as prohibiting:

\* \* \* \* \*

The foregoing noted provision contains certain exemptions which do not appear applicable to the question at hand and are, therefore, not set forth.

We believe that it is clear beyond doubt that the administration of anti-hog cholera serum-virus and/or vaccines to swine falls within the term practice of veterinary medicine as noted in Section 340.010. However, such acts by a person not licensed under the provisions of Chapter 340 are not prohibited unless such is done for valuable consideration. Section 340.020, supra.

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You first inquire whether the provisions of Chapter 340 would apply to a person who administers anti-hog cholera serum-virus and/or vaccines to swine and receives remuneration in the form of a commission which would represent the difference between the wholesale and retail price of the product used. It is our understanding that the sale of the product is negotiated by the person who administers the serum rather than by the serum company and if such is the case, other facts of a particular transaction would be necessary for a complete determination of the question. If, for example, a person sells serum and administers it for the retail price of the serum and also sells serum at the retail price without administering it, it would appear that his commission was obtained for the sale of the serum. However, if a person would sell and administer serum at a stated price and at the same time would sell the serum without the service of administration, at a lower price, it would appear that such person was receiving consideration for the administration of the serum. It is obvious then that the mode of operation of a particular person would have to be inquired into to determine if in fact such person was subject to the provisions of Chapter 340, RSMo Cumulative Supp., 1953.

Your next inquiry under the provisions of Chapter 340 would apply to a person employed by a serum company and who receives a specified salary for his work in connection with the administration of the product. If the remuneration is for the administration of anti-hog cholera serum-virus and/or vaccines, then it is our opinion that such person should procure a license to practice veterinary medicine since he is receiving valuable consideration for performing acts defined to be the practice of veterinary medicine.

#### CONCLUSION

Therefore, it is the opinion of this office that if a person employed by a serum company receives in fact compensation for the administration of anti-hog cholera serum-virus and/or vaccines to swine, as distinguished from compensation for the sale thereof, he would be practicing "veterinary medicine" and required to procure a license under the provisions of Chapter 340, RSMo Cumulative Supp., 1953.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Yours very truly,

John M. Dalton  
Attorney General

DDG/vtl