

PHARMACISTS:
JURIES:

It is the opinion of this office that pharmacists are exempt from jury duty under the provisions of Section 338.160, RSMo.

June 5, 1969

Opinion No. 214

Honorable Lloyd W. Tracy, Secretary
Missouri State Board of Pharmacy
911 Dunklin Boulevard
Jefferson City, Missouri 65101



Dear Mr. Tracy:

This is in answer to your recent letter in which you asked whether Section 338.160, RSMo 1959, which exempts pharmacists from jury duty, was repealed by implication upon the enactment of Senate Bill No. 246 by the 70th General Assembly of Missouri.

Section 338.160 provides:

"All persons licensed under sections 338.010 to 338.190 as pharmacists and actively engaged in the practice of their profession shall be free and exempt from jury duty in all the courts of this state."

This provision was enacted in 1909, Laws 1909, page 478. It has never been expressly repealed.

Prior to the adoption of Senate Bill No. 246, Section 494.020 of the statutes included druggists as one of several occupations that were exempt from service on any jury. It seems clear that a licensed pharmacist would have been considered a druggist under this provision. State v. O'Kelly, 258 Mo. 345, 167 S.W. 980 (1914); State v. Clinkenbeard, 142 Mo. App. 146, 125 S.W. 827 (1910); State v. Donaldson, 41 Minn. 74, 42 N.W. 781 (1889).

Senate Bill No. 246 revised the statutory provisions relating to qualifications and disqualifications of jurors and exemptions from jury service. The general provisions for exemption from jury

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duty are now found in Section 494.031, RSMo 1959, as a result of the changes made by Senate Bill No. 246. This section contains a lengthy list of persons who may be excused from jury duty upon timely application. Although paragraph three of Section 494.031 specifically exempts those engaged in the practice of medicine, osteopathy, chiropractic or dentistry, there is no mention in Section 494.031 of pharmacists or druggists. Your letter asks if the omission of pharmacists from the list of occupations mentioned in Section 494.031 constitutes an implied repeal of Section 338.160, which expressly exempts licensed pharmacists from jury duty.

A long series of Missouri cases has held that repeals by implication are not favored. See e.g. International Business Machine Corporation vs. State Tax Commission, 362 S.W.2d 635 (Mo 1962); State ex rel Preisler v. Toberman, 364 Mo. 904, 269 S.W. 2d 753 (1954). In City of Nevada v. Bastow, 328 S.W.2d 45 at 49 (K.C. App. 1959), the court quoted from C.J.S. as follows:

"It will be presumed that the legislature, in enacting a statute, acted with full knowledge of existing statutes relating to the same subject; and, where express terms of repeal are not used, the presumption is always against an intention to repeal an earlier statute, unless there is such inconsistency or repugnancy between the statutes as to preclude the presumption * * * "

The opinion in Riley v. Holland, 362 Mo. 682, 243 S.W.2d 79 (1951) quotes the following language from State ex rel George B. Peck Co. v. Brown, 340 Mo. 1189, 105 S.W.2d 909, 911:

"Repeals by implication are not favored-- in order for a later statute to operate as a repeal by implication of an earlier one, there must be such manifest and total repugnance that the two cannot stand; where two acts are seemingly repugnant, they must, if possible, be so construed that the latter may not operate as a repeal of the earlier one by implication; if they are not irreconcilably inconsistent, both must stand."

Thus, there was no repeal by implication unless there is irreconcilable conflict between Section 338.160 and Senate Bill No. 246.

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Both must stand if they can be construed so as to operate without conflicting. A comparison of Section 338.160 and Senate Bill No. 246 reveals no irreconcilable conflict. Assuming for purposes of analysis that the deletion of the term "druggist" was deliberate rather than an oversight, there is still no clear inconsistency. It was pointed out earlier in this opinion that pharmacists would be included within the term "druggist". The word "druggist" appears to be broader than the word "pharmacist", however, and the intention of the legislature in deleting "druggist" might have been to repeal the provision for excusing druggists who are not pharmacists. The following language from the opinion in State v. Clinkenbeard, 142 Mo. App. 146, 125 S.W. 827, 829 (Spr. Mo. App. 1910), lends support to this possibility:

"It was there held (referring to State v. Chipp, 121 Mo. App. 556, 97 S.W. 236) that 'druggist' and 'dealer in drugs' are synonymous terms, and that one may be a 'druggist' or a 'dealer in drugs' without being a registered pharmacist * * * "

Moreover, to construe Senate Bill No. 246 as not repealing Section 338.160 by implication, would not impair the operation of Senate Bill No. 246. Senate Bill No. 246 made a number of important changes. For example, while Section 494.020 exempted the listed persons from jury duty, the new language of Section 494.031 provides that listed persons shall be excused only upon timely application. This and other changes would not be affected by the continued existence of the exemption provided for in Section 338.160.

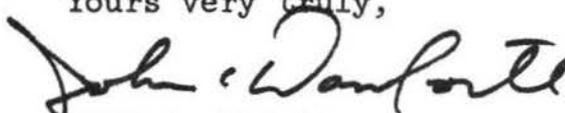
Since Section 338.160 and Senate Bill No. 246 are not in irreconcilable conflict, Section 338.160 was not repealed by implication. Therefore, it is the opinion of this office that pharmacists are exempt from jury duty under the provisions of Section 338.160.

CONCLUSION

It is the opinion of this office that pharmacists are exempt from jury duty under the provisions of Section 338.160, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my assistant, James E. Westbrook.

Yours very truly,



JOHN C. DANFORTH
Attorney General