

LIQUOR CONTROL ACT: No license necessary for a druggist to sell intoxicating liquor on prescription; it is unlawful for a pharmacist to refill any such prescriptions.

4-20
April 12, 1934.



Hon. E.J. Becker,
Supervisor of Liquor Control,
Jefferson City, Missouri.

Dear Mr. Becker:

This department is in receipt of your request for an opinion construing Section 4 of the Liquor Control Act of the State of Missouri.

I.

The first question raised in your letter is whether or not Sec. 4 requires all druggists selling intoxicating liquor for medicinal purposes to pay a state license fee of \$50.00 and whether or not this permit gives to the druggist the right to sell intoxicating liquor in the original package.

Section 4 of the Liquor Control Act of Missouri specifically provides as follows:

*****And, provided further, that nothing in this act shall be construed as limiting the right of a physician to prescribe intoxicating liquor in accordance with his professional judgment for any patient at any time, or prevent a druggist from selling intoxicating liquor to a person on prescription from a regularly licensed physician as above provided."

This section of the law specifically prohibits any interference on the part of the State with the right of a druggist to sell intoxicating liquor to a person on prescription from a regularly licensed physician. It is therefore the opinion of this department that no license is needed for a druggist to sell intoxicating liquor on prescription; however,

if a druggist desires to sell intoxicating liquor in the original package other than on prescription, a license must be obtained from the Supervisor of Liquor Control.

II.

The second question raised in your letter has to do with prescriptions for intoxicating liquor.

Sections 4485 and 4486, Laws of Mo. 1933, p. 277, constitute the law in the State of Missouri with reference to prescriptions, and provide as follows:

"Sec. 4485. It shall be lawful for any reputable physician licensed to practice medicine and surgery in this state to prescribe any distilled, spirituous, vinous, fermented or other alcoholic liquor in such quantities and with such frequency and dosage as in his judgment the needs of his patient may require."

"Sec. 4486. It shall be lawful for any registered pharmacist engaged in the retail drug business or employed as a pharmacist in any retail drug store in this state to fill any prescription of any reputable physician licensed to practice medicine and surgery in this state, prescribing for the person named in such prescription any distilled, spirituous, vinous, fermented or other alcoholic liquor."

It will be noticed by reference to these two sections that any distilled, spirituous, vinous, fermented or other alcoholic liquor may be prescribed by the physician, and it is lawful for any registered pharmacist engaged in the retail drug business in any retail drug store to fill any such prescriptions. Sec. 4485, supra, specifically provides that the physician may prescribe intoxicating liquor in such quantities as in his judgment the needs of his patient may require. There is, therefore, no limitation in the laws of Missouri with reference to the quantity of intoxicating liquor that may be prescribed.

In your letter you suggest the following hypothetical case:

"If a person is issued a prescription by a doctor for medicinal purposes, he takes the prescription to the drug store and has it filled, and later gives the number of the prescription to a friend. He goes in the same drug store and gives the number of this prescription and asks the druggist

to refill it. This might be on a Sunday, and the person desiring the whiskey will ask for the number, and also state that it is for medicinal purposes, in accordance with the original prescription. Is it lawful for the druggist to fill this prescription?"

It will be noticed by reference to Sec. 4486, supra, that it is made lawful for registered pharmacists to fill only prescriptions prescribing for the person named in such prescription. It is therefore the opinion of this department that it would be unlawful for a pharmacist to refill any such prescriptions as suggested in your hypothetical case.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK,
Attorney General

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