

POISON-PROSECUTING ATTORNEYS: Prosecuting Attorneys are authorized to inspect poison register books.

June 28, 1937.

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Honorable G. C. Beckham  
Prosecuting Attorney  
Crawford County  
Steelville, Missouri



Dear Sir:

We acknowledge your request for an opinion dated May 26, which reads as follows:

"I would like to have your opinion as to the construction of a certain part of Section 13152 of the Revised Statutes of 1929. In this section in referring to the record which shall be kept by druggist of poisons which he has sold at retail, the following language is used.

'Nor shall it be lawful for any registered pharmacists to sell any poisons included in Schedule "A" without, before delivering the same to the purchaser, causing an entry to be made in a book kept for that purpose, stating the date of sale, name and address of purchaser, the name of poison sold, the purpose for which it was represented by the purchaser to be required and the name of the dispenser--such book to be always open for inspection by the proper authorities, and to be preserved for at least five years.'

"The question in my mind here is who would be considered proper authorities. I, as Prosecuting Attorney of Crawford County, have requested a certain drug-

gist of this County to permit me to inspect his poison register, and he has refused to allow me to do this. Do you think I would be considered a proper authority in this case?"

You have quoted in your request portions of the law from Section 13152, R. S. Mo. 1929, which we do not requote.

Section 13156 R. S. Mo. 1929, provides in part:

"\* \* \* \*Whoever shall violate any of the provisions of section 13152 of this chapter shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. \* \* \* \*."

Section 11316 R. S. Mo. 1929, provides in part:

"The prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned, \* \* \* \*."

#### CONCLUSION.

The duty of the Prosecuting Attorney is to commence and prosecute criminal actions, and he must exercise reasonable diligence in the prosecution of criminal offenses. He must inquire into the facts. His duty to commence prosecution embraces what is reasonably necessary to bring a criminal to trial.

The failure of a registered pharmacist in Missouri to keep books, in a specified manner on the sale of named poisons, is a crime, and unless the proper authorities be able to inspect said books from time to time, then there can be no proof of the crime. The Legislature defined

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the duty in order to reasonably control the sale of poisons and put on record any registered pharmacist who would sell poisons. The law was intended to especially deter those registered pharmacists who would otherwise promiscuously sell poisons. The Legislature also intended to put on record those who purchased poisons, and keep the books open to "proper authorities." This is an exceedingly wholesome police regulation and needs no argument to support its sense.

This department is of the opinion that the Prosecuting Attorney, pursuant to his duty to commence criminal actions, is a proper authority to inspect the poison register book required by law to be kept by registered pharmacists, in Missouri.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General.

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