

STATE PHARMACY BOARD: Annual fee for permit due October 1, 1952,  
PHARMACY PERMITS(annual) permit expires June 30, 1953. Proprietor of  
DUE WHEN: wholesale drug business must be licensed  
USE OF FEES: pharmacist or have at least one in his employ.  
INSPECTORS, SALARIES AND Permit fees can be used if appropriated to  
EXPENSES: Board's use by General Assembly. Inspectors  
could be hired after August 1, 1952, on 1951-  
1953 appropriation if  
there are sufficient funds  
in it.



September 30, 1952

10-6-52

Missouri State Board of Pharmacy  
Charles W. Riley, Secretary  
Springfield, Missouri

Gentlemen:

Your recent request for an opinion of this department has been assigned to me for answer. Said request reads as follows:

"(1) House Bill #184, Section 1. provides for a \$10.00 annual fee, payment issued for one year only. Part 1 under Section 3. states that permits expire June 30th following date of issue, at which time renewals are due for the ensuing year. Would it be legal or would the Board have a legal right to collect a one-half fee of \$5.00 for a period of six months dating from January 1, 1953, to June 30, 1953, at which time an annual renewal would be due? This procedure would set us straight as our Board operates under a fiscal year.

"(2) House Bill #185, Section #338.010, deals in part with persons operating wholesale drug businesses. Is not a firm operating as a wholesale drug or pharmaceutical company required to have in its employ at least one person who is licensed as a pharmacist?

"(3) If collections from the permits can be started as of January 1, 1953, when can this money be appropriated to the Pharmacy Board for use in hiring inspectors as provided for in House Bill #185, Section #338.150, and for the over-all enforcement of the law?"

Paragraph (1) of your request, we are of the opinion, is answered by the first three sentences of Section 1 of House Bill No. 184 of the 66th General Assembly, which reads as follows:

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"Section 1. On and after sixty days from and after the taking effect of this act, it shall be unlawful for any person, copartnership, association or corporation to open, establish, operate or maintain any pharmacy, as defined by statute, within the state of Missouri, without first obtaining a permit to do so from the Missouri board of pharmacy. Application for such permit shall be made upon a form to be prescribed and furnished by said board; such application shall be accompanied by a fee of ten dollars. The permit issued shall be for one year only, but may be renewable annually upon payment of a like fee. \* \* \* (Underscoring ours.)

A study of the underscoring part of the above set out "Act" brings us to the conclusion that a permit of the Missouri Board of Pharmacy is to be obtained by any pharmacy operating in this state by October 1, 1952, which is sixty days after this "Act" became effective (August 1, 1952). That applications shall be made to the Board, upon suitable forms issued by the Board and said application shall be returned accompanied by the fee of \$10.00. That upon receipt of said application and fee by the Board it shall issue a permit carrying the expiration date of June 30, 1953, on the first series of permits issued under this "Act" and dated each year thereafter from July 1 of the year of issuance and expiring of June 30 of the following year.

The dates for the period for which the aforesaid licenses are to be issued is controlled by Section 3 of House Bill No. 184, supra, which reads as follows:

"Section 3. 1. The permit, or renewal thereof, issued under the provisions of this act, and under which a pharmacy is being operated, shall be posted and exposed in a conspicuous place in such pharmacy, and the same shall expire on the last day of June following the date of issue; such permit or renewal of permit shall not be transferable.

"2. Application blanks for renewal permits shall be mailed by the Missouri board of pharmacy to each permittee on or before the first day of June in each year, and if application for renewal of permit is not made before the first day of July following, the existing permit, or renewal thereof, shall lapse and become null and void upon the thirty-first day of that month.

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"3. All fees collected under the provisions of this act shall be deposited in the state treasury to the credit of the Missouri Board of Pharmacy Fund, to be used by the Missouri Board of Pharmacy in the enforcement of the provisions of this act, when appropriated for that purpose by the General Assembly." (Underscoring ours.)

With regard to paragraph (2) of your request, Section 338.010 of House Bill No. 185 of the 66th General Assembly, effective August 1, 1952, reads as follows:

"338.010. It shall be unlawful for any person not licensed as a pharmacist within the meaning of this chapter to compound, dispense or sell at retail any drug, chemical, poison or pharmaceutical preparation upon the prescription of a physician, or otherwise, or to compound physicians' prescriptions, except as an aid to or under the direct supervision of a person licensed as a pharmacist under this chapter. And it shall be unlawful for any owner or manager of a pharmacy or drug store, or other place of business, to cause or permit any other than a person licensed as a pharmacist to compound, dispense or sell at retail, any drug, medicine or poison, except as an aid to or under the direct supervision of a person licensed as a pharmacist; provided, however, that nothing in this section shall be construed to interfere with any legally registered practitioner of medicine or dentistry in the compounding or dispensing of his own prescriptions, nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist or who shall keep in his employ at least one person who is licensed as a pharmacist, nor with the sale of poisonous substances which are sold exclusively for use in the arts or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word poison and the names of at least two readily obtainable antidotes; provided, however, that nothing in this section shall be so construed as to apply to the sale of patent and proprietary medicines, and the ordinary household remedies and such drugs or medicines as are normally sold by those engaged in the sale of general merchandise; provided further, that nothing in this section shall be so construed as to prevent any person, firm or corporation from owning a pharmacy, drug or chemical store or apothecary shop, providing such pharmacy, drug or chemical store

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or apothecary shop shall be in charge of a licensed pharmacist." (Underlining ours.)

From the above underscored part of the statute we are of the opinion that the owner of a wholesale drug or pharmaceutical company must be a licensed pharmacist or must have at least one licensed pharmacist in his employ to comply with the statute.

In answering paragraph (3) of your request we believe we have answered the part dealing with collections for permits in the first part of this opinion. However, going on to the question of when the fees collected from the issuance of permits, under Section 1 of House Bill No. 184, supra, can be appropriated by the General Assembly to the use of the Missouri Board of Pharmacy, as provided by Section 338.150 of House Bill No. 185 for the hiring of inspectors and overall enforcement of the law, we are of the opinion that these funds deposited to the Missouri Board of Pharmacy Fund are available for the Board's use to the extent of the 1951-1953 biennium appropriation for the Board of Pharmacy.

Section 338.150, supra, reads as follows:

"338.150. The board of pharmacy may appoint one or more assistant secretaries or inspectors not to exceed three, who shall be registered pharmacists, and who shall receive such salary as may be prescribed by the board of pharmacy, not to exceed three hundred dollars per month, and necessary traveling expenses while engaged in the performance of official duties, payable monthly. Such assistant secretaries or inspectors and any member of the board of pharmacy are hereby given the right of entry and inspection upon all open premises purporting or appearing to be a drug or chemical store, apothecary shop or place of business for the retailing, exposing for sale at retail, or the dispensing or selling of drugs, medicines, chemicals, or poisons or for the compounding of physicians' prescriptions. Such assistant secretaries or inspectors shall assist the secretary of the board of pharmacy and perform such duties as the board may direct. Such assistant secretaries or inspectors shall be subject to removal at the pleasure of the board of pharmacy."

The three inspectors or assistant secretaries provided for in Section 338.150 of House Bill No. 185, supra, can be hired by your Board now, or could have been hired by it at any time after August 1, 1952, the effective date of this statute. They can also be paid salaries not to exceed \$300.00 per month if that sum is available from your Board's 1951-1953 appropriation for Personal Service. Also

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their necessary traveling expenses may be paid by the Board if the money is available to be used from the State Board of Pharmacy's 1951-1953 appropriation for General Expense. Our reason for so holding regarding salaries and expenses is that the Missouri Appropriations Laws, 1951-1953, read as follows:

"Section 7.420. State Board of Pharmacy.-- There is hereby appropriated out of the State Treasury, chargeable to the Board of Pharmacy Fund, the sum of Twenty-seven Thousand Dollars (\$27,000.00), for the use of the State Board of Pharmacy, for the payment of salaries, wages and per diem of the officers, members and employees; for the original purchase of property; for the repair and replacement of property; and for the general operating and other expenses; for the biennial period beginning July 1, 1951 and ending June 30, 1953, as follows:

"Personal Service:

"Salaries, wages and per diem of the Board members necessary employees and Federal Old-Age and Survivors Insurance . . . . . \$14,000.00

"Additions, repairs and Replacements and Operation:

"For the original purchase, repair and replacement of office furniture and equipment, material and supplies.

"General expense: including communication, printing binding, transportation, travel, within the state, insurance and premiums on bonds, other general expense including stationery and office supplies, office rent, light, heat, water and power supplies and Federal Old-Age and Survivors Insurance.  
Total Additions, Repairs and Replacements and Operation . . . . . \$13,000.00

"Total from State Board of Pharmacy Fund \$27,000.00"

(Underscoring ours.)

From a reading of the above 1951-1953 appropriation it will be seen that \$27,000 has been appropriated out of the Board of Pharmacy Fund. All monies received in said fund from the licenses provided

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for in House Bill No. 184 are available if needed to provide the money so appropriated, which is the sum of \$27,000.

The primary rule of statutory construction is to ascertain and give effect to the lawmaker's intent. Nordberg v. Montgomery, 351 Mo. 180, 173 S.W.(2d) 387; Wallace v. Woods, 340 Mo. 452, 102 S.W.(2d) 91. This, we believe, has been done in the present instance.

CONCLUSION

It is therefore, the opinion of this department that:

1. The annual fee of \$10.00, provided by law, for a permit to operate a pharmacy, as defined by law in House Bill No. 184 of the 66th General Assembly, is due October 1, 1952, and said permit shall be for one year and be dated so as to expire on June 30, 1953.

2. Under House Bill No. 185, Section 338.010, supra, it is mandatory that the proprietor of a wholesale drug business be a licensed pharmacist or have at least one licensed pharmacist in his or its employ.

3. Collections from permits deposited to the Board of Pharmacy Fund can be used to pay inspectors' salaries or for the purpose of overall enforcement of the "Pharmacy Law" if the Board of Pharmacy has sufficient money in its 1951-1953 appropriation to pay the salaries out of the part allotted for Personal Service and the expenses out of that part allotted for General Expense.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

OK  
J. E. TAYLOR  
Attorney General

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