

**Licenses—Druggists—Pharmacists—Merchants.**

Drug dealers license may be issued to merchants other than registered pharmacists in towns or cities where there is no registered pharmacist engaged in the pharmacy business but not otherwise.

Mr. J. A. Riedel,  
Secretary,

October 24, 1931.

Montana State Board of Pharmacy,  
Boulder, Montana.

My dear Mr. Riedel:

You request my opinion whether under chapter 104, laws of 1931, you may legally issue the drug dealers license therein provided for to merchants other than registered pharmacists in towns or cities where there are registered pharmacists engaged in the business.

Said chapter 104 provides that it is unlawful for any person, firm or corporation to sell or vend drugs, medicines and remedies as provided under chapter 227 R.C.M. 1921 without first having a license issued by the state board of pharmacy provided that the act shall not be construed so as to interfere with any physician in his practice nor with the wholesale business of any wholesale dealer as such nor with the distributing, keeping, or handling of drugs, acids or poisons by merchants or corporations for use in their own business when kept in the original plainly labeled package.

It is further provided that licenses within the meaning of the act shall be issued subject to the regulations of said chapter 227 to any place of business, firm or corporation which under chapter 227 may sell

or vend any such drugs, medicines or remedies, excepting that no license shall be required for the sale of patent or proprietary medicines, fungicides, insecticides and germicides for agricultural or horticultural uses when sold in original packages or containers.

Said chapter 227 provides among other things that it is unlawful for any person other than a registered pharmacist to retail, vend, compound or dispense drugs, medicines, poisons, chemicals, or pharmaceutical preparations unless he be a registered pharmacist or unless a registered pharmacist is placed in charge of the store, pharmacy, shop or institution so selling or vending the said drugs, medicines, etc., but excepting from the provisions of the act the keeping, distributing or handling of drugs, acids or poisons by merchants or corporations for use in their own business when kept in original and plainly labeled packages, physicians in their regular practice, wholesalers, and "merchants in towns where there is no regularly licensed pharmacists when selling drugs, medicines, pharmaceutical, or proprietary medicinal preparations in original and plainly labeled packages, as the public may require." The sale of patent or proprietary medicine in original packages, when plainly labeled, and such non-medicinal articles as are usually sold by general merchants, are also permitted to be sold without the seller being a registered pharmacist or the business being in charge of a registered pharmacist.

Inasmuch as under the provisions of said chapter 227, merchants in towns where there is no regularly licensed pharmacist may sell drugs, medicines, pharmaceutical or proprietary medicinal preparations in original and plainly labeled packages and in view of the fact that under chapter 104 of the laws of 1931 a person is entitled to be licensed who is authorized to sell the drugs, medicines, etc., under said chapter 227, it is my opinion that a license may be issued to merchants who are not registered pharmacists when their business is conducted in towns where there is no regularly licensed pharmacist which license shall entitle the merchant to sell drugs, medicines, pharmaceutical or proprietary medicinal preparations in original and plainly labeled packages.

It is further my opinion that inasmuch as such merchants are only authorized under said chapter 227 to sell such drugs, medicines, etc., in those towns wherein there is no registered pharmacist; this provision excludes the right to make such sales by said merchants in those towns where there is a registered pharmacist and therefore under chapter 104 no license may be issued to any such merchant where his business is conducted in a town where there is a registered pharmacist engaged in the pharmacy business.

Very truly yours,

L. A. FOOT,

Attorney General.