

Opinion No. 55.

Licenses—Drugs.

HELD: All persons selling drugs must obtain a license to do so.

March 11, 1937.

Hon. J. A. Riedel
Secretary, Montana State Board of
Pharmacy
Boulder, Montana

Dear Mr. Riedel:

You have requested my opinion as to whether all drug dealers must obtain a license before being permitted to sell drugs.

Section 3202.7 R. C. M., 1935 (Section 1, Chapter 104, Laws of 1931) provides:

"It shall be unlawful for any person, persons, firm, or corporation to sell or vend drugs, medicines, and remedies as provided for under sections 3170 through 3202 in the state of Montana without first having a license issued under the authority of the state of Montana, provided nothing in this act shall be construed so as to interfere with any physician in his practice, nor with the wholesale business of any wholesale dealer as such, nor interfere 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."

Section 3202.8 provides that application for license must be made to the secretary of the state board of pharmacy, and Section 3202.9 provides that the annual fee shall be \$3.00. It will be seen from the section above that it applies to all persons who sell drugs. It is my opinion that such license must be obtained by all persons who sell drugs even though they sell only such drugs as are contained in the manufacturers' original package, since the statute makes no exception. There is nothing in the decision in *State v. Stephens*, 102 Mont. 414, 59 Pac. (2) 54, to the contrary. That decision merely opened the door, permitting persons other than registered pharmacists to sell drugs in the manu-

facturers' original package. The door having been opened so that other persons, as well as registered pharmacists may sell such drugs, they, as well as others, are not permitted to make such sales unless they obtain a license. The decision above quoted was concerned principally with the constitutionality of Section 3170 R. C. M., 1935, in so far as it prevented persons other than registered pharmacists to sell drugs in manufacturers' original package.