

Opinion No. 81.

State Board of Pharmacy—Stores—
License Fees—Statutes—
Construction.

HELD: A person selling from house to house household or medicinal drugs or patent or proprietary medicines in a manufacturer's original packages must pay a license fee of \$3.00, as provided by Section 8 (a), Chapter 175, Laws of 1939, in order to be permitted to sell the same even though said person in selling said merchandise may be using an automobile or other vehicle to store and convey his stock.

June 20, 1939.

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

Dear Mr. Riedel:

You have requested my opinion on the question "whether a person, selling from house to house the household, patent or proprietary medicines in the manufacturers original packages, must pay a license fee of three dollars as provided by Section 8—paragraph (a) of Chapter 175, S. L. of 1939, to be permitted to sell the same."

The answer to this question depends upon the meaning of the word "store" as used in this section. We do not have before us all the facts with reference to the equipment of such person selling from house to house but we assume that you refer to persons who travel in trucks, vans, automobiles or other vehicles carrying a stock of merchandise, including household and medicinal drugs, as well as patent or proprietary medicines.

The term "store" is not defined by this Act. Section 3170.1 (a) (Section 2) provides:

"The term 'pharmacy' shall mean a drug store or other established place regularly registered by the State Board of Pharmacy, in which prescriptions, drugs, medicines, chemicals, and poisons are com-

pounded, dispensed, vended or sold at retail."

In Section 4 (b) (2) of the act amending Section 3174, R. C. M., 1935, the board of pharmacy is given the power to determine the minimum equipment necessary in and for a "pharmacy and drug store" and in paragraph (5) of said section:

"To enter and inspect by its duly authorized representative at any reasonable times any and all places where drugs, medicines, chemicals or poisons are sold, vended, given away, compounded, dispensed or manufactured. It shall be a misdemeanor for any person to refuse to permit or otherwise prevent such representative from entering any such place and making such inspection." (Emphasis ours.)

We find therefore that the Legislature has used several terms such as "pharmacy," "drug store," "store," "any and all places where drugs * * * are sold * * *"; that in Section 8 (a) it did not use the term "drug store," which has a well understood and defined meaning but instead used the word "store," which is "a broad word, employed in many senses, and variously defined." (60 C. J. 116.)

The act is not a revenue measure but a regulatory measure enacted in the exercise of the police power of the state. The license fee of \$3.00 is provided for the purpose of paying the cost of regulation. Section 8 (a) must be read with Section 4 (b) (5), in order to determine the intention of the Legislature. The places which are regulated are the places which should pay the license fee. That is the purpose of the fee. The board has the power to enter and inspect any and all places where drugs and medicines are sold. This certainly is broad enough to include any kind of a vehicle which carries a stock of merchandise. This being true, the Legislature certainly must have intended that the word "store" should cover such vehicles.

We think therefore that the word "store," as used in Section 8 (a) was intended by the Legislature to mean "any and all places where drugs or medicines are sold." To hold otherwise would make the act inconsistent. In construing a statute the different

provisions should be harmonized. (59 C. J. 993 et seq.) Moreover, where two or more constructions of a statute are possible that construction should be given which will render the act constitutional. (12 C. J. 788; *State v. District Court*, 41 Mont. 357, 109 Pac. 438; *Porter v. Investors Syndicate*, 286 U. S. 461, 287 U. S. 569; *U. S. v. Metzendorf*, 252 Fed. 933.) Unless the term "store" is given a broad meaning, Section 8 (a) would be discriminatory and contrary to both the Federal and State Constitutions and therefore void.

Aside from the act itself and the intention of the Legislature to be gathered therefrom, the word "store," as has been said, is a broad word. It has been defined as follows: "Any place where goods are kept for sale, whether by wholesale or retail." (Webster's New International Dictionary.) Compare language with Section 4 (b) (5), supra. "A place where merchandise of any kind is kept for sale." (New Standard Dictionary.) "A place where goods are kept for sale." (New Century Dictionary.) "A place where goods are sold at a profit." (Bouvier's Law Dictionary.) "Any place where goods are deposited and sold when engaged in buying and selling them." (*Warburton-Beaham S. Co. v. City of Jackson*, 118 South. 606-608, 151 Miss. 503; *Divine v. George*, 166 Pac. 242, 243, 63 Colo. 341.) "The word, 'store' means a place where goods are sold, whether in a house or not, as used in Code 1880, Section 585, levying a privilege tax on each store." (*Folkes v. State*, 63 Miss. 81-83.) "any place where goods are sold * * * whether in a house or not." (60 C. J. 117, Note 99.) In the latter case the court said: "Although goods are usually kept for sale in a house it is not true that their being kept in a house is necessary to constitute a store." The court cited *Craig v. Pattison*, 21 South. 756, 74 Miss. 881, 884, where the court said: "It is not necessary that they (goods) be kept in a house to constitute a store." See also *San Juan v. Porto Rico Coal Company*, 28 Porto Rico 245, 247.

The word "place" is a very indefinite term. (48 C. J. 1211.) It may be applied to any locality. It may be employed as designating, including, or synonymous with automobile or vehicle. (48 C. J. 1212.)

Allison v. Hern, 102 Kan. 48, 169 Pac. 187, 188;

State v. Pio, 111 Me. 506, 90 Atl. 120, 121;

State v. Rogl, 100 Kan. 590, 164 Pac. 1165, 1166 (Wagon);

Kansas City Breweries Co. v. Kansas City, 96 Kan. 731, 153 Pac. 523, 524;

Daly v. Webb, Jr. 4 C. L. 309 (Cart).

Suppose any inclosure on wheels, stocked with drugs and medicines, whether an automobile, truck, van, wagon, cart or other vehicle capable of being drawn or propelled from place to place should be stationed on a lot next to a drug store and should sell drugs and medicines from its stock, would there be any reasonable basis for making a difference in their classification? Both would be stores in reality and within the meaning of the statute. If it should be moved about from place to place in the process of selling its stock, it would be no less a store.

It is therefore my opinion that your question should be answered in the affirmative and that such person must pay the license fee of \$3.00 named in Section 8 (a) in order to be permitted to legally sell "household and medicinal drugs" therein specified.