



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable E. G. Pharr
County Attorney
Delta County
Cooper, Texas

Dear Sir:

Opinion No. O-2244
Re: Texas Liquor Control Act -
Medicinal Permits - Pharmacies.

Your request for opinion has been received and carefully considered by this department. We quote from your letter of request as follows:

"Article 666, Section 15, sub-section 18, reads as follows:

"(18). Medical Permits. Retail Pharmacists shall be entitled to receive medical permits and sell or dispense liquor for medical purposes only. The holders of such permits are authorized to purchase liquor from holders of wholesaler's permits in this State. Any Pharmacy for which a permit is sought must be a bona fide pharmacy registered with the State Board of Pharmacy; must employ and have on duty at all times a registered pharmacist and must have been in operation as a pharmacy for at least two (2) years in the particular political subdivision in which a permit is sought." (666, Sec. 15, Subsec. 18, P.C.)

"Your opinion is requested as to the construction of the words, '....must have been in operation as a pharmacy for at least two (2) years....'

"The facts upon which this request for opinion is based are as follows:

"About 35 years ago the City Drug Store, a pharmacy, was established in the city of Cooper,

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Delta County, It was owned and operated as a pharmacy by the same man until he sold the business in January of 1939. On the 9th day of March 1939, the City Drug Store was levied upon by the tax collector of Delta County for delinquent taxes. The store was closed on that date by said tax collector. On the 22nd day of March, 1939, the City Drug Store, was sold at public auction to Delta County and other taxing units having delinquent taxes against it. On April 29, 1939, Delta County and other taxing units sold said City Drug Store to an individual purchaser, who, on April 30, 1939 re-opened the store for business. The store (pharmacy) was closed between March 9, 1939 and April 29, 1939, a period of fifty (50) days. The keys were in the hands of the tax collector of Delta County. The store was not in operation during those fifty (50) days.

"The City Drug Store as such has been registered with the State Board of Pharmacy for many years. It has been located in Cooper at least 35 years. It has been in operation as a pharmacy all this time with the exception of the 50 days from March 9, 1939 to April 29, 1939.

"Subsection 18 of Section 15 of the Texas Liquor Control Act states that the pharmacy must 'have been in operation as a pharmacy for at least two (2) years' before it shall receive a medical permit to dispense liquor for medical purposes.

"Under the above statement of facts, is the City Drug Store in Cooper entitled to receive a Medicinal Permit at this time?

"On April 1, 1940 the owner of said City Drug Store made application to the Texas Liquor Control Board for a medicinal permit. As county attorney of Delta County, it is my privilege to contest this application under authority of said Liquor Control Act.

"I am unable to find any authorities on this question and am unable to find where your department

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has ever passed on this question.

"Delta County has heretofore voted 'dry.' It is our opinion that we should be allowed to remain dry. We cannot do so with a liquor drug store in our county. We have none at this time. It is my opinion that the liquor laws should be construed so as to accomplish the enforcement of the wishes of the people. Under the loose regulations which the law imposes on liquor drug stores, they amount to nothing less than a package store in a wet area.

"Art. 666 - 2, P.C. reads as follows:

"This entire act shall be deemed an exercise of the police power of the State for the protection of the welfare, health, peace, temperance, and safety of the people of the State, and all its provisions shall be liberally construed for the accomplishment of that purpose."

"Many years ago when Delta County voted 'dry', the voters evidently believed that liquor was detrimental to the general welfare, health, peace, temperance, and safety of the people or it would not have voted so.

"Under the present conditions and circumstances it appears to me the phrase referred to should be construed to mean that the pharmacy must have been in operation as a pharmacy continuously for two years next preceding the date of the application for the permit and that the two year period should begin to run on the date the store reopened for business on April 29, 1939; that the two year period will not expire until April 29, 1941."

Article 666, Section 15, sub-section 18, Vernon's Annotated Texas Penal Code, reads in part as follows:

"(18) Medicinal Permits. Retail Pharmacists shall be entitled to receive medicinal permits and sell or dispense liquor for medicinal purposes only. The holders of such permits are authorized to purchase liquor from holders of wholesaler's permits

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in this State. Any pharmacy for which a permit is sought must be a bona fide pharmacy registered with the State Board of Pharmacy; must employ and have on duty at all times a registered pharmacist and must have been in operation as a pharmacy for at least two (2) years in the particular political sub-division in which a permit is sought."

Article 4542a, Vernon's Annotated Texas Civil Statutes, creates the Texas State Board of Pharmacy, provides for the licensing and registration of pharmacists and regulates the practice of pharmacy in this State.

Section 19 of Article 4542a, Vernon's Annotated Texas Civil Statutes, reads as follows:

"A 'pharmacy' or 'drug store' as used in this Act is any store or place where drugs or medicines are sold or furnished in any bona fide manner at retail to the consumer wherein a registered pharmacist is continuously employed."

Section 20 of Article 4542a, Vernon's Annotated Texas Civil Statutes, reads as follows:

"A 'pharmacist' as used in this Act, means a person licensed by the State Board of Pharmacy, to prepare, compound and dispense physicians' prescriptions, drugs and medicines and poisons."

Section 15 of Article 4542a, Vernon's Annotated Texas Civil Statutes, reads as follows:

"In all stores in which a registered pharmacist is continuously employed, and where the provisions of this Act have been fully complied with, there shall be displayed in a prominent place in or on the front of said store the word 'Pharmacy.'"

Section 16 of Article 4542a, Vernon's Annotated Texas Civil Statutes, reads as follows:

"It shall be unlawful for any person to display in or on any store or place of business the word 'Pharmacy' either in the English or any foreign language, unless there is continuously employed

therein a registered pharmacist under the provisions of this Act."

Section 17 of Article 4542a, Revised Civil Statutes of Texas, reads as follows:

"Every person, firm, or corporation desiring to continue operating a retail pharmacy or drug store in this State, as the same is defined herein, and every manufacturer of drugs and medicines as defined herein, after the passage of this Act shall procure from the Board a permit for each store or factory to be operated by making within six (6) months application to the Board upon a form to be furnished by said Board, setting forth under oath ownership and location, and the name, with the certificate number, of the pharmacist registered in this State, or physician, dentist, veterinarian or chiropodist who is to be continuously employed by the pharmacy or drug store or factory, provided that the Board may in its discretion refuse to issue such permit to such applicant unless furnished with satisfactory proof that said applicant is engaged in the business of conducting a pharmacy, drug store, or factory for the purpose of manufacturing drugs; provided further that at any time after the issuance of a permit by the Board to such applicant, the Board may revoke or cancel the permit when satisfactory proof has been presented to such Board that said permit holder is not conducting a bona fide pharmacy or drug store. The permit provided for herein shall be issued annually by the Board upon a receipt of proper application accompanied by a fee of Two Dollars (\$2); this permit to be displayed conspicuously at all times in the store or factory of original issue. Every person, firm or corporation desiring to open a new pharmacy, drug store, or factory shall procure the permit before mentioned, before commencing business and the same discretionary powers may be used by the Board in passing upon such application. No more than one store or factory may be operated under one permit. In case of change of personnel of registered pharmacists, the Board shall be notified of such change within ten (10) days; provided that the same pharmacist's name shall not appear on more than one (1) permit."

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Opinion No. O-537 of this department holds, among other things, that a pharmacy is not a bona fide pharmacy unless it is registered with the State Board of Pharmacy, and unless it has at all times a registered pharmacist.

This department held on December 14, 1938, in an opinion written by Hon. Joe Sharp, Assistant Attorney General, addressed to Hon. Bert Ford, Administrator, Texas Liquor Control Board, Austin, Texas, that in order to be eligible for a medicinal permit a pharmacy must have been registered with the State Board of Pharmacy for at least two years prior to the filing of its application for a medicinal permit and that in order to be a pharmacy it must have had employed and had on duty a registered pharmacist continuously for the two year period prior to the filing of the application.

Under the facts stated in your letter and under the above authorities the City Drug Store was not a "pharmacy" as that term is defined by law during the fifty-day period between March 9, 1939 and April 29, 1939.

You are, therefore, respectfully advised that it is the opinion of this department that the conclusion reached by you in your letter is eminently correct.

Trusting that this satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Wm. J. Fanning*
Wm. J. Fanning
Assistant

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APPROVED APR 27, 1940

Gerard B. Mann

ATTORNEY GENERAL OF TEXAS

