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MEMBERS OF A BOARD OF COUNTY COMMISSIONERS, OFFICERS AND EMPLOYEES OF A COUNTY HOME, ARE NOT IN THEIR OPERATION OF A COUNTY HOME WITHIN THE DEFINITION OF A "PERSON"—§§337.01, R.C., 4729.51, R.C., 4729.60, R.C., 4729.50, R.C., 4729.99, R.C.

SYLLABUS:

Members of a board of county commissioners, and officers and employees of the county home, are not, in their operation of the county home, within the definition of "person" as set forth in Section 4729.50, Revised Code, and are not subject to the provisions of Sections 4729.50 to 4729.66, inclusive, and 4729.99, Revised Code.

Columbus, Ohio, July 27, 1962

Hon. James O. Gossett, Prosecuting Attorney
Ashland County, Ohio, 26½ West Main Street, Ashland, Ohio

Dear Sir:

Your request for my opinion reads as follows :

"In your Opinion No. 2781, dated January 24, 1962, you found that the state department of health and various general and city health districts do not fall within the definition of 'person' as set forth in Section 4729.50 (A), Revised Code of Ohio, and thus not required to comply with Sections 4729.50 to 4729.66, inclusive, Revised Code of Ohio.

"In our county, and, as I understand, in other counties of the state, the directors and managers of county homes under the direction and control of the county commissioners have been buying, at wholesale, certain drugs contemplated in these sections and dispensing them to the inmates of county homes.

"Thus, as in your former opinion, the facts in this case are that in the normal course of their operations such directors receive, purchase, and use the so-called dangerous drugs. However, they do not sell such drugs.

"My question, therefore, is as follows :

"Are such county employees required to comply with Sections 4729.50 to 4729.66, inclusive, Revised Code of Ohio, or are they exempt for the reasons outlined in the opinion mentioned above?"

A county home is an agency of the county and is under the direct supervision of the board of county commissioners. In this regard, Section 5155.01, Revised Code, reads in part:

“The board of county commissioners shall make all contracts for new buildings and for additions to and repairs of existing buildings necessary for the county home, and shall prescribe such rules and regulations as it deems proper for the management and good government of such home and to promote sobriety, morality, and industry among inmates.

“* * *

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Section 4729.50 to 4729.66, inclusive and Section 4729.99, Revised Code, deal with the handling of dangerous drugs. Section 4729.51, Revised Code, reads in pertinent part as follows:

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“No person, except a licensed terminal distributor of dangerous drugs or a practitioner shall purchase for the purpose of resale, possess for sale, or sell, at retail, dangerous drugs.

“The possession by any person, other than a practitioner, registered wholesale distributor of dangerous drugs, or licensed terminal distributor of dangerous drugs of more than one hundred fifty times the ‘usual dose’ recognized in the official United States pharmacopoeia or the official national formulary, or any supplements to either of them, of any dangerous drugs other than insulin, or, in the case of any dangerous drug not listed in the official United States pharmacopoeia or the official national formulary, or any supplements to either of them, more than one hundred fifty times the ‘recommended or usual unit dosage’ appearing on the label of such dangerous drug pursuant to the requirements of the ‘Federal Food, Drug and Cosmetic Act,’ 52 Stat. 1040 (1938), 21 U.S.C. 301, shall constitute presumptive evidence that such person is in violation of this division.

“* * *

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Section 4729.60, Revised Code, reads, in part, as follows:

“Before a registered wholesale distributor of dangerous drugs may sell dangerous drugs at wholesale to any person other than a practitioner, a registered wholesale distributor of dangerous drugs, a manufacturer of dangerous drugs, a carrier or a warehouseman but only for the purposes of carriage or storage, or a terminal distributor of dangerous drugs who is not engaged in the sale of dangerous drugs within this state, such wholesale distributor must obtain from the purchaser and the purchaser must furnish to the wholesale distributor a certificate indicating

that the purchaser is a licensed terminal distributor of dangerous drugs. * * *

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Division (I) of Section 4729.50, Revised Code, reads as follows :

“(I) ‘Terminal distributor of dangerous drugs’ means a person other than a practitioner who is engaged in the sale of dangerous drugs at retail, or any person other than a wholesale distributor or a pharmacist who has in his possession, custody, or control dangerous drugs for any purpose other than for his own use and consumption, and includes pharmacies, hospitals, nursing homes, laboratories, and all other persons who procure dangerous drugs for sale or other distribution by or under the supervision of a pharmacist or practitioner.”

Under the facts as given, the directors and managers of county homes purchase dangerous drugs at wholesale. Also, county homes are under the direction of the board of county commissioners, and members of that board might be said to have control or custody of dangerous drugs. Thus, if such persons are “persons” under the sections here involved, they are “terminal distributors of dangerous drugs” and subject to the provisions of law above set forth.

It is a general rule that *the state is not bound by the terms of a general statute unless it is so expressly enacted*. 49 Ohio Jurisprudence 2d, 653, Section 4. In my Opinion No. 2781, issued on January 24, 1962, I applied this rule to the word “person” as used in Sections 4729.50 to 4729.66, inclusive, and Section 4729.99, Revised Code, and concluded in the first two paragraphs of the syllabus as follows :

“1. The state department of health and the various general and city health districts do not fall within the definition of ‘person’ as set forth in Section 4729.50 (A), Revised Code, and thus not being made specifically subject to the provisions of Sections 4729.50 to 4729.66, inclusive, Revised Code, are not required to comply with such sections.

“2. The department of health and general and city health districts, not being subject to the provisions of said Sections 4729.50 to 4729.66, inclusive, a wholesaler, manufacturer, or distributor may sell dangerous drugs to such agencies without being subject to prosecution and fine under those provisions of law.” In that opinion, I said :

“Sections 4729.50 through 4729.66, Revised Code, are of a general nature and uniform application throughout the state and

must, therefore, be considered general laws. 50 Ohio Jurisprudence, 2d, 19, Statutes, Section 9.

“The state department of health is clearly an arm of the state government created by the legislature to assist in the preservation and protection of the public health. 26 Ohio Jurisprudence, 2d, 665, Health, Section 5.

“The legislature has by virtue of Chapter 3709., Revised Code, provided for the creation of general and city health districts and such districts are agencies of the state created by the legislature to aid and promote the protection of public health on the local level. *State, ex rel. Mower v. Underwood*, 137 Ohio St., 1, *David Davies, v. Sensenbrenner*, 76 O.L.A., 33, 156 N.E., 2d, 202, 168 Ohio St., 356, (dismissed for want of debatable constitutional question).

“Thus it would appear that the ‘state’ should be excluded from the operation of Sections 4729.50 through 4729.66, Revised Code, unless specifically made subject to the law; and here it becomes necessary to consider whether the state is included within the definition set forth in Section 4729.50 (A), Revised Code, or by other specific provisions.

“Section 4729.50 (A), Revised Code, provides in part:

“‘As used in sections 4729.50 to 4729.66, inclusive, of the Revised Code:

“(A) ‘Person’ includes any corporation, association, or partnership of one or more individuals.

“ * * * * * * * * ”

“A consideration of the definition of ‘person’ set forth in Section 4729.50 (A), Revised Code, clearly indicates that the legislature did not specifically include any agency, department or division of the state government.”

A county is a mere agency of the state for certain specified purposes. 14 Ohio Jurisprudence 2d, 201, Section 4. Thus, the word “person” as here considered does not apply to the county and its officers and employees, including members of the board of county commissioners and directors and managers of county homes.

Accordingly, it is my opinion and you are advised that members of a board of county commissioners, and officers and employees of the county home, are not, in their operation of the county home, within the definition

of "person" as set forth in Section 4729.50 Revised Code, and are not subject to the provisions of Sections 4729.50 to 4729.66, inclusive, and 4729.99, Revised Code.

Respectfully,
MARK McELROY
Attorney General