

certify the acknowledgment on the same sheet on which the instrument is written or printed, and subscribe his name thereto."

It may be noted that the provisions of the section quoted specifically enumerate the officials before whom such acknowledgments *must be taken*. The terms of the section are mandatory, and it is obviously apparent that a township clerk is not mentioned as such an official. Since the conveyance by deed of a cemetery lot is a conveyance of an estate or interest in real property within the meaning of the provisions of this section, it is thought to be logically concluded that a township clerk is not empowered or authorized by law to take acknowledgments to cemetery deeds.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

2692.

STATE BOARD OF PHARMACY—POISON LAWS—DUTY TO ENFORCE SAME—WHO AUTHORIZED TO SELL POISONS—PROPERTIES OF WOOD ALCOHOL AND DENATURED ALCOHOL POISONOUS.

1. *Under the provisions of section 12671-1 G. C. (109 O. L. 100), it is the duty of the state board of pharmacy to enforce the so-called poison laws included in sections 12663 et seq. G. C., and by virtue of the provisions of section 1313 G. C. it is the duty of said pharmacy board to enforce the laws relating to the practice of pharmacy embraced within the provisions of sections 12705 to 12710, inclusive, of the General Code.*

2. *Under the provisions of section 12706 of the pharmacy act it is unlawful for anyone who is not "a legally registered pharmacist or a legally registered assistant pharmacist employed in a pharmacy or drug store under the management or control of a legally registered pharmacist" to sell a drug, chemical, poison or pharmaceutical preparation, excepting such substances as are excepted from the operation of said section by the following section of said pharmacy act. For violating the provisions of said section one is subject to a fine of not less than fifty dollars nor more than two hundred dollars.*

3. *Whether or not a substance is a poison or other matter mentioned in said section is a question of fact. However, the properties of wood alcohol and denatured alcohol are so well known in reference to their injurious and deadly effects when taken internally as to afford little or no difficulty in the determination of the question of the practical operation of said section in view of the commonly known meaning of the word poison.*

4. *The so-called poison laws embraced within sections 12663 et seq. G. C. are still in full force and effect, excepting in those instances wherein they are in direct conflict with the provisions of the pharmacy act, i. e., sections 12705 et seq. G. C.*

COLUMBUS, OHIO, December 14, 1921.

State Board of Pharmacy, HON. M. N. FORD, Secretary, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

"At a recent meeting of the board I was directed to request you to

render an opinion as to who may legally sell wood alcohol and denatured alcohol and the provisions under which same may be sold.

In requesting this opinion the board is aware of the fact that former Attorney-General Turner rendered an opinion on same to the state board of agriculture, under date of October 7, 1916.

At that time, however, the board of agriculture did not have the poison law to enforce, as their attention was directed mostly to the labeling and quality of the articles.

Since the poison laws of the state have been given to this board for enforcement we are very much concerned in safeguarding the public who buy these poisons from irresponsible dealers. We have had brought to our attention many reported cases of death and also cases of blindness from the use of wood alcohol or denatured alcohol, which was so easily purchased under the ruling of the former attorney-general.

In submitting this request I respectfully refer you to sections 12663 to 12671-1, inclusive, and section 12706 of the General Code."

In the opinion to which you refer (Opinions of the Attorney-General, 1916, Vol. II, page 1664) it was held, as disclosed in the second paragraph of the syllabus, that:

"Wood and denatured grain alcohol may be sold by garage men, hardware dealers and other persons who are not registered pharmacists, or regular druggists, and by persons who have neither a saloon nor a wholesale liquor license."

However, an analysis of said opinion shows that the principal consideration was given by the author to the laws regulating intoxicating liquors and the laws dealing with the pure food and drug laws. The conclusion was reached that neither of these regulations controls the sale of the substances which you name. This department concurs in said conclusion in this respect. It is further believed that no change has been made in the laws relating to intoxicating liquors or the pure food and drug laws which would change the rule heretofore announced. Said opinion further points out that in the sale of "wood alcohol and denatured grain alcohol, which by the process of denaturing becomes highly poisonous, regard must be had to the provision of section 12666 G. C. et seq." and, after quoting section 12666 G. C., says:

"The manner of the sale and delivery of the articles mentioned in section 12666 G. C., 'provided by law' as therein referred to, is found in sections 12667 to 12671 G. C., both inclusive, and in the sale of wood alcohol and denatured grain alcohol the provisions of said sections above mentioned should be complied with."

Material sections to consider in connection with the foregoing quotation are as follows:

"Sec. 12666. Whoever, knowingly sells or delivers to any person otherwise than in the manner prescribed by law, or sells or delivers in the manner prescribed by law but without the written order of an adult, to a minor under sixteen years of age, any of the following described substances or any poisonous compounds, combinations or preparations thereof, to wit: \* \* \* or other virulent poison, shall be

fined not less than ten dollars nor more than fifty dollars for each offense."

°"Sec. 12667. Whoever sells or delivers to any person a substance named in the next preceding section without having first learned by due inquiry that such person is aware of the poisonous character thereof and that it is desired for a lawful purpose or without plainly labeling the word 'poison,' and the names of two or more antidotes therefor, upon the box, bottle or package containing it or delivers such substance without recording in a book kept for the purpose, the name thereof, the quantity delivered, the purpose for which it is alleged to be used, the date of its delivery, and the name and address of the purchaser and the name of the dispenser or fails to preserve said book for five years and submit it at all times for inspection to proper officers of the law, shall be fined not less than ten dollars nor more than fifty dollars."

There are certain exceptions following, which are believed unnecessary to specifically consider in connection with your inquiry.

While as heretofore pointed out this department concurs with the opinion of the attorney-general issued in 1916, referred to above, in that the laws relating to intoxicating liquors and the pure food and drug laws do not control the sale of wood alcohol and denatured alcohol, and further that sections 12663 et seq. G. C., being found under the subdivision entitled "Poison" of chapter 6, which said chapter is described in the General Code as "offenses against the public health," do apply, it is not believed that the general conclusion reached in said opinion as disclosed by that part of the syllabus heretofore quoted is justified by the sections of the statutes quoted in said opinion, upon which the conclusion was based. Said opinion made no mention of, and evidently no consideration was given to section 12706 G. C., which is a part of the same chapter but found under the subdivision relating to physicians, pharmacists and dentists, and which provides as follows:

"Whoever, not being a legally registered pharmacist, or a legally registered assistant pharmacist employed in a pharmacy or drug store under the management or control of a legally registered pharmacist, compounds, dispenses or sells a drug, chemical, poison or pharmaceutical preparation, shall be fined not less than fifty dollars nor more than two hundred dollars. Each day's violation of this section shall constitute a separate offense."

In my judgment this section is of vital importance in the consideration of your question. The history of this legislation discloses that original section 12705 G. C., which prescribes a penalty for one who manages or conducts a retail drug store when not a registered pharmacist, etc., and section 12707 G. C., which excepts physicians when supplying their patients and the selling of certain other substances specifically enumerated therein from the operation of sections 12705 and 12706, and the section above quoted were all incorporated in one section known as 4505 R. S. This section was construed in the case of Sickles et al. vs. State, 7 O. N. P. (n. s.) 338, wherein it was held:

"Section 4405, Revised Statutes, governing the sale of drugs, poisons, etc., embraces two offenses: (a) prohibiting a 'proprietor or manager,' not a legally registered pharmacist, to open or conduct a pharmacy without having in charge a legally registered pharmacist;

and (b) prohibiting any person not a legally registered pharmacist, or a legally registered assistant pharmacist under a legally registered pharmacist, to compound, dispense or sell any drug, poison, etc.”

In the case of *Vincent vs. State of Ohio*, 12 O. C. C. (n. s.) 142, an affidavit charging defendant, in substance, with selling a certain poison when not being a pharmacist legally registered under the laws of the state of Ohio was held to be sufficient.

In view of the judicial determinations above referred to, it seems clear that the purpose and intent of the legislature in the enactment of said section 12706 G. C. was to prohibit the sale of any of the substances enumerated therein and not mentioned in the following section, by anyone not a registered pharmacist. In other words, this section does not apply alone to sales made by retail drug stores, but applies generally to all such sales made within the state. The logic of this conclusion will be apparent when consideration is given to the fact that this enactment relates to the public health. It is a measure enacted by the legislature in pursuance of the police power, the manifest object of which is to protect the public as a whole against the dangers arising from the promiscuous sale of such substances. A construction which would conclude that such a sale could not be made by a drug store excepting through a registered pharmacist, but could be made by anyone when not made at a drug store, produces such absurd results, in view of the objects undoubtedly intended by the legislature, as to violate the familiar rules of statutory construction in this respect.

It is believed that the conclusion reached by the former attorney-general in so far as it conflicts with the determination herein is explained by the fact that in said former opinion no consideration was given to said section 12706 G. C. It would seem expedient at this time to consider, first, whether the substances named in your letter are included in section 12706, and second, if so included, does the following section exclude them from the operation thereof. Of course, whether or not a given substance comes within the provisions of said section is a question of fact. However, for the purpose of this opinion we may take into consideration those matters of common knowledge in relation to the substances which you mention with reference to the application of said section. In substance, section 12706 forbids anyone not a legally registered pharmacist from dispensing or selling a “poison.”

“Poison” has been defined in Webster’s dictionary as follows:

“Anything noxious or destructive to life, health or morality; venom; \* \* \*”

“Denatured alcohol” is described in Webster’s dictionary as being “alcohol so altered or produced as to be fatal as a beverage.”

In view of the fact that it is so generally known that wood alcohol when taken internally frequently results in death or blindness, it would seem useless to prolong the discussion as to whether or not it is a “poison.”

In the case of *Campbell vs. Brown*, 85 Kansas, page 527, the court in construing some similar statutes held that wood alcohol was included within the phrase “substance or liquid usually denominated poison,” which phrase was contained in a criminal statute.

The foregoing supports the statement made in your communication to the effect that wood alcohol and denatured alcohol are poisonous. If these substances are poisonous, then the sale thereof is prohibited by those who are not registered pharmacists, unless otherwise excepted by section 12707 or 12708

G. C. Consideration has been given to said sections and it is believed that the substances you mention are not referred to therein.

In passing it is perhaps proper to note that the so-called "pharmacy act" herein referred to is a later enactment than the so-called "poison laws." This might raise the question of whether or not the poison laws are still in force. However, it is believed that unless in some respects the poison laws are in direct conflict with the pharmacy act, they still remain in effect. Therefore, the proper labeling should be required under these sections, and proper inquiry made and precaution taken before a sale is made, even though made by a registered pharmacist. In the Kansas case heretofore referred to a very similar question was presented and it was held that a later law did not repeal the former. In other words, it is believed that wherever the so-called poison laws can be harmonized with the pharmacy act effect should still be given to the provisions of the former, but wherever there is a direct conflict in the so-called pharmacy act and the poison laws, the pharmacy act should control.

It is further noted, as stated in your letter, that the enforcement of the poison laws as mentioned herein is cast upon the state board of pharmacy by the provisions of section 12671-1 G. C. (109 O. L. 100). However, this statute specifically enumerates the sections to which it is to apply and does not include section 12706, which, as heretofore pointed out, is a part of the pharmacy act. However, section 1313 G. C. requires the board of pharmacy to enforce the laws relating to the practice of pharmacy and specifically mentions section 12706.

The foregoing discussion may be summarized as follows:

(1) Under the provisions of section 12671-1 G. C. (109 O. L. 100), it is the duty of the state board of pharmacy to enforce the so-called poison laws included in sections 12663 et seq. G. C., and by virtue of the provisions of section 1313 G. C. it is the duty of said pharmacy board to enforce the laws relating to the practice of pharmacy embraced within the provisions of sections 12705 to 12710, inclusive, of the General Code.

(2) Under the provisions of section 12706 of the pharmacy act it is unlawful for anyone who is not "a legally registered pharmacist or a legally registered assistant pharmacist employed in a pharmacy or drug store under the management or control of a legally registered pharmacist" to sell a drug, chemical, poison or pharmaceutical preparation, excepting such substances as are excepted from the operation of said section by the following sections of said pharmacy act. For violating the provisions of said section one is subject to a fine of not less than fifty dollars nor more than two hundred dollars.

(3) Whether or not a substance is a poison or other matter mentioned in said section is a question of fact. However, the properties of wood alcohol and denatured alcohol are so well known in reference to their injurious and deadly effects when taken internally as to afford little or no difficulty in the determination of the question of the practical operation of said section in view of the commonly known meaning of the word poison.

(4) The so-called poison laws embraced within sections 12663 et seq. G. C. are still in full force and effect, excepting in those instances wherein they are in direct conflict with the provisions of the pharmacy act, i. e., sections 12705 et seq. G. C.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*