

1354

1. RAT PREPARATIONS, POISONOUS—DRUGS AND CHEMICALS—CONSUMPTION BY HUMAN BEINGS IN CERTAIN QUANTITIES COULD BE DELETERIOUS OR DESTRUCTIVE TO LIFE—MAY BE SOLD UNDER COMPLIANCE WITH SECTION 12667 G. C.—“NARCOTIC DRUGS”—SECTION 12672-1 G. C.
2. SALE TO MINOR UNDER SIXTEEN YEARS OF AGE CAN BE MADE ONLY UPON WRITTEN ORDER OF ADULT.

SYLLABUS:

1. “Poisonous rat preparations,” consisting of various drugs (other than those defined in Section 12672-1, General Code, as “Narcotic drugs”) and chemicals blended with other substances serving as a filler or base in the completed products, which if consumed by adult human beings in quantities even as minute as sixty grains or less would likely be deleterious or destructive to life, may legally be sold by anyone provided that a seller of such a preparation (other than a manufacturer or wholesaler complying with the requirements outlined in Section 12668, General Code) must comply with the provisions of Section 12667, General Code.

2. The sale to a minor under sixteen years of age of such poisonous rat preparations can be made only upon the written order of an adult.

Columbus, Ohio, November 16, 1946

Mr. M. N. Ford, Secretary, State Board of Pharmacy
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“At a recent meeting of our Board I was directed to request an opinion from your department concerning the legal sale of poisonous rat preparations other than Red Squill and the necessity for registration of the same as a poison.

In the consideration of this question we would respectfully refer you to Section 1296-1 relative to the term ‘drug’ and also the term ‘poison.’ With respect to the registration of such sales as a poison we would refer you to Section 12667 and concerning the sale of a drug or poison we would refer you to Section 12706 and the exceptions as provided in Section 12707. The question is, therefore, who may legally sell and under what conditions, poisonous rat preparations other than Red Squill.”

Since the above letter was received you have informed me that the rat preparations about which you are concerned consist of various drugs (other than those defined in Section 12672-1, General Code, as "narcotic drugs") and chemicals blended with other substances which serve as a filler or base in the completed products. You have also informed me that the completed products themselves, if consumed by adult human beings in quantities even as minute as sixty grains or less, would likely be deleterious or destructive to life.

The General Assembly has defined the word "poison" in Section 1296-1, General Code, which reads in part as follows:

"The following words and phrases as used in Sections 1296 to 1313, inclusive, 12663 to 12671-1, 12672-1 to 12672-23, inclusive, 12705, 12705-1, 12706, 12707, 12708, 12708-1, to 12708-5 inclusive, 12709 and 12710 of the General Code shall have the following meanings, unless the context otherwise requires: * * *

(4) The term 'poison' means any drug, chemical or preparation likely to be deleterious or destructive to adult human life in quantities of sixty grains or less."

By reason of the information you have presented to me with respect to the effect on human beings of the poisonous rat preparations which are the subject of your inquiry, it is clear to me that these preparations are poisons within the scope of the foregoing definition. Therefore, according to the provisions of Section 1296-1, General Code, supra, they are poisons within the meaning of the word "poison" as it is used in the sections enumerated in Section 1296-1, General Code, which include Sections 12666, 12667, 12706 and 12707, General Code.

Section 12706, General Code, is concerned in part with the sale of poisons and reads as follows:

"Whoever, not being a legally registered pharmacist or a legally registered assistant pharmacist employed in a retail 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."

Certain exceptions to the foregoing provisions are contained in Section 12707, General Code, which provides in part as follows:

“* * * Nothing in this act shall be construed to apply to economic poisons used in agricultural and industrial arts or products used for the control of insect or animal pests, or weeds, or fungus diseases, provided the agricultural economic poisons are offered for sale in original unbroken packages.”

Sections 12707 and 12706, General Code, in their present form were amended at the same time and form part of one act, entitled “An Act to enact supplemental sections 1296-1 and 12705-1 and to amend sections 12705, 12706 and 12707 of the General Code relative to the sale of drugs.” (121 O. L. H. B. 92) Accordingly in view of the provisions of Section 12707, General Code, it is clear that Section 12706, General Code, *supra*, does not apply to “products used for the control of insect or animal pests.”

The mere mention of the phrase “animal pests” suggests to me the well-known fact that rats are the cause of much destruction of food materials and other property and even the spread of certain diseases of man. Rats unquestionably fall within the classification of “animal pests.” It is equally uncontradictable that one of the principal means at man’s disposal to curb the destructive influence of these “animal pests” is rat poison. A poisonous rat preparation is nothing more than a product used for the control of “animal pests” and therefore comes within the exception provided by Section 12707, General Code. Since poisonous rat preparations come within this exception, the provisions of Section 12706, General Code, *supra*, which prohibit the sale of poison by anyone not a legally registered pharmacist or a legally registered assistant pharmacist employed in a retail drug store under the management or control of a legally registered pharmacist, do not apply to the sale of poisonous rat preparations.

Section 12666, General Code, is part of an act adopted by the Seventy-Fifth General Assembly entitled “An Act to regulate the sale of poisons and to repeal sections 4238-27, 4364-54, and 6957 of the Revised Statutes of Ohio.” (95 O. L. 280) This section is presently effective and reads in part as follows:

“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 other virulent poison,

shall be fined not less than ten dollars nor more than fifty dollars for each offense.”

It is apparent that under the above section the sale or delivery to a minor under sixteen years of age of poisonous rat preparations is restricted by the fact that it can be made lawfully only upon the written order of an adult.

The manner prescribed by law for the sale of the substances named in Section 12666, General Code, is outlined in Section 12667, General Code, which reads as follows:

“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.”

Upon consideration of the foregoing section, together with Sections 12666 and 1296-1, General Code, it can be seen that the sale or delivery to any person of a poisonous rat preparation is prohibited by criminal penalty unless the vendor (1) determines by due inquiry that the buyer is aware of the poisonous character thereof and that it is desired for a lawful purpose; (2) labels the word “Poison” and the names of two or more antidotes therefor upon the box, bottle or package containing it; and (3) records 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 names and addresses of the purchaser and dispenser. The record of the sale thus required to be made must be preserved for five years and at all times be open to inspection by proper officers.

Exceptions to these requirements are provided in Sections 12669, 12670 and 12671, General Code. These exceptions are summarized in Vol. 32, Ohio Jurisprudence, at page 62, in the following language:

"The provisions of G. C. Secs. 12666, 12667, do not apply to substances dispensed to or upon the order or prescription of persons believed by the dispenser to be lawfully authorized practitioners of medicine or dentistry, or to manufacturers or wholesalers, if the box, bottle or package containing such substance, sold at wholesale, is labeled with the name of the substance, the word 'Poison,' and the name and address of the manufacturer or wholesaler. Further exceptions are made with reference to sales or deliveries of a single box, bottle, or other package, or the bulk of one-half fluid ounce or the weight of one-half avoirdupois ounce, which does not contain more than an adult medicinal dose of such poisonous substance; sulphide of antimony oxide or carbonate of zinc, or colors ground in oil and intended for use as paints, or calomel, paregoric or other preparation of opium containing less than 2 grains of opium to the fluid ounce, or of preparations recommended in good faith for diarrhoea or cholera, when each bottle or package is accompanied by specific directions for use and a caution against the habitual use thereof, of liniments or ointments when plainly labeled 'For external use only,' or preparations put up and sold in the form of pills, tablets, or lozengers and intended for internal use, when the dose recommended does not contain more than one-fourth of an adult medicinal dose of such poisonous substance."

Certain of these exceptions are clearly unrelated to the problem you have presented to me. The very nature of the preparations about which you inquire compels the assumption that they would under no circumstances be prescribed by a practitioner of medicine or dentistry and that not even in the smallest amount could they be considered to be medicine. Since these poisonous rat preparations consist of more than a single chemical in a simple state, the exceptions relating to various single chemicals have no application to your inquiry. Nor need we be concerned with the exceptions relating to preparations of opium as these are defined as "narcotic drugs" in Section 12672-1, General Code, and have been excluded from this inquiry.

One of these exceptions, however, is pertinent to your inquiry. By virtue of Section 12668, General Code, the record of sale and delivery required by Section 12667, General Code, is not required of manufacturers and wholesalers selling a poisonous rat preparation at wholesale if the box, bottle or package containing such preparation when sold at wholesale is labeled with the name of the preparation, the word "Poison" and the name and address of the manufacturer or wholesaler.

These sections of the General Code which I have considered in this opinion contain all of the provisions relating to the sale of poison which exist presently in Ohio law. Accordingly, it is my opinion, in answer to your inquiry, that :

1. "Poisonous rat preparations," consisting of various drugs (other than those defined in Section 12672-1, General Code, as "narcotic drugs") and chemicals blended with other substances serving as a filler or base in the completed products, which if consumed by adult human beings in quantities even as minute as sixty grains or less would likely be deleterious or destructive to life, may legally be sold by anyone provided that a seller of such a preparation (other than a manufacturer or wholesaler selling at wholesale, if the box, bottle or package containing such preparation when sold at wholesale is labeled with the name of the preparation, the word "Poison" and the name and address of the manufacturer or seller) must (a) determine by due inquiry that the buyer is aware of the poisonous character thereof and that it is desired for a lawful purpose; (b) label the word "Poison" and the names of two or more antidotes therefor upon the box, bottle or package containing it; (c) record 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 names and addresses of the purchaser and dispenser; and (d) preserve such record of sale for five years at all times open to inspection by proper officers.

2. The sale to a minor under sixteen years of age of such poisonous rat preparations can be made only upon the written order of an adult.

Respectfully,

HUGH S. JENKINS
Attorney General