

2972.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE FORESHEE COMPANY, COLUMBUS, OHIO, FOR CONSTRUCTION OF REPAIRS ON BUILDINGS, STATE SCHOOL FOR THE BLIND, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$4,992.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, December 5, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Education, and The Foreshee Company, of Columbus, Ohio. This contract covers the construction and completion of General Contract for Repairs on Buildings (Re-roofing of Girls' and Boys' Gymnasium), State School for the Blind, Columbus, Ohio, and calls for an expenditure of Four thousand nine hundred and ninety-two dollars (\$4,992.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure have been obtained as required by Section 12 of House Bill No. 502 of the 87th General Assembly. In addition you have submitted a contract bond, upon which the Globe Indemnity Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2973.

POISONS—INSECTICIDES—SALES BY DEALERS OTHER THAN REGISTERED PHARMACISTS APPROVED—MANDATORY REGULATIONS DISCUSSED.

SYLLABUS:

Dealers in insecticides in Ohio need not be registered pharmacists or legally registered assistant pharmacists employed in a pharmacy or drug store under the management and control of a legally registered pharmacist, but must comply with the provisions of law herein discussed, viz., General Code, Sections 12663 to 12676, inclusive; Sections 12706 to 12708-5, inclusive, and Sections 1177-29 to 1177-49, inclusive.

COLUMBUS, OHIO, December 6, 1928.

HON. J. S. HOUSER, *Chief, Department of Entomology, Ohio Agricultural Experiment Station, Wooster, Ohio.*

DEAR SIR:—I am in receipt of your recent communication which reads as follows:

"I have a report from Mr. _____, salesman for the _____ Company, of Cleveland, Ohio, that two or three dealers in insecticides in Cleveland have been arrested recently and fined for selling poisonous materials.

Mr. _____ understands that the basis for these prosecutions is a law prohibiting other than druggists licensed to handle poisons from selling such materials. Does such a law exist on the statutes in Ohio?"

Chapter 6, under Title I of Part Fourth of the General Code, entitled "Offenses against Public Health" contains two classes of sections relating to the sale of poisons. The first group comes under the heading of "Poison" and consists of Sections 12663 to 12676, inclusive, of the General Code.

Section 12663, General Code, prohibits the depositing of poison on thoroughfares and imposes a penalty for violations.

Section 12664, General Code, prohibits the careless distribution of samples containing drugs or poison and also prescribes penalties.

Section 12666, General Code, prohibits the sale or delivery of certain poisonous compounds, combinations or preparations "otherwise than in the manner prescribed by law" or "in the manner prescribed by law, but without the written order of an adult to a minor under sixteen years of age;" and also prescribes a penalty for violations.

Section 12667, General Code, provides 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."

Section 12668, General Code, provides exceptions to the two preceding Sections and reads as follows:

"The provisions of the next two preceding sections shall 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, and the record of sale and delivery therein mentioned shall not be required of manufacturers and wholesalers selling any of such sub-

stances at wholesale, if the box, bottle or package containing such substance when sold at wholesale, is labeled with the name of the substance, the word 'Poison', and the name and address of the manufacturer or wholesaler."

Section 12669, General Code, provides a further exception and reads as follows:

"It shall not be necessary to place a poison label upon, nor record the delivery of preparations containing substances named in Section twelve thousand six hundred and sixty-six, when a single box, bottle or other package of the bulk of one-half fluid ounce or the weight of one-half avoirdupois ounce does not contain more than an adult medicinal dose of such poisonous substance."

Section 12670, General Code, eliminates the necessity of placing poison labels upon certain other materials.

Section 12671, General Code, provides for the labeling of certain liniments or ointments with a label "for external use only."

The other sections relating to the sale or delivery of poisons appear under the heading "Physicians, Pharmacists and Dentists" and consist of Sections 12706 to 12708-5, inclusive, of the General Code.

Section 12706, General Code, prohibits the managing or conducting of a retail drug store without having a legally registered pharmacist in full and actual charge of the pharmaceutical department and provides a penalty for violations.

Section 12706, General Code, 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."

This is undoubtedly the law which is the subject of the inquiry contained in your letter. This section was enacted subsequent to Sections 12663 to 12676, inclusive, of the General Code, and consequently is controlling in any case of conflict. Thus, in an opinion of the Attorney General dated December 14, 1921, found in Opinions, Attorney General, 1921, Vol. II, page 1129, it was held that prior to the enactment of Section 12708-1, General Code, specifically excepting denatured or wood alcohol from the provisions of said Section 12706, General Code, owners of garages and filling stations, and in fact all persons other than registered pharmacists were forbidden to sell or handle it by the provisions of Section 12706, General Code, although not barred therefrom by the sections under the title of "Poison", above set forth.

Section 12707, General Code, provides exceptions to Section 12706, and reads as follows:

"The next two preceding sections shall not apply to a physician or prevent him from supplying his patients with such medicines as to him seems proper, the making or vending of patent or proprietary medicines by a retail dealer, the selling of copperas, borax, blue vitriol, saltpeter, sulphur,

brimstone, licorice, sage, juniper berries, senna leaves, castor oil, sweet oil, spirits of turpentine, glycerine, glauber's salt, cream of tartar, bicarbonate of sodium, quinine, rochelle salts, epsom salts, alum, camphor gum, oil of cinnamon, oil of lemon, or prohibit a person from selling in the original packages, paregoric, essence of peppermint, essence of cinnamon, essence of ginger, hive syrup, syrup of ipecac, tincture of arnica, syrup of tolu, syrup of squills, spirits of camphor, number six, sweet spirits of nitre, compound cathartic pills, quinine pills and other similar preparations when compounded by a legally registered pharmacist and put up in bottles or boxes bearing the label of such pharmacist or a wholesale druggist, with the name of the article and directions for its use on each bottle or box."

Section 12708-1, General Code, as above noted, was passed after the opinion of the Attorney General in 1921, *supra*, to specifically except denatured and wood alcohol from said provisions.

Section 12708, General Code, contains further exceptions which probably more directly affect the situation to which your letter refers, and reads as follows:

"Sections twelve thousand seven hundred and five and twelve thousand seven hundred and six shall not prohibit a person from selling Paris green and other materials or compounds used exclusively for spraying and disinfecting when put up in bottles or boxes, bearing the name of a legally registered pharmacist or wholesale dealer, and labeled as required by law, or apply to or interfere with the exclusively wholesale business of a dealer."

Further provisions regulating the manufacture and sale of insecticides and fungicides appear in Sections 1177-29 to 1177-42, inclusive, of the General Code.

Section 1177-29 reads as follows:

"Each person, firm or corporation who manufactures, sells or offers for sale, in this state, arsenate of lead, Paris green, lime-sulphides, miscible combinations of mineral or vegetable oils, Bordeaux mixture or any insecticide or fungicide or essential ingredient thereof used for the control of insects or fungus diseases within the state, shall affix to each package in a conspicuous place on the outside thereof, a plainly printed or written certificate which shall state, in the case of solids, the number of net pounds, or in the case of paste arsenate of lead the number of net pounds on a fifty percentum water basis, or in the case of liquids, the number of gallons contained therein, the name, brand or trade mark under which it is sold, or offered for sale, the name of the manufacturer and the place of manufacturing same. The certificate shall state also the percentages and chemical compositions of all essential substances or ingredients of said insecticides and fungicides or combinations of the same contained in said commodities, and in the case of lime-sulphur solutions the certificate on each package shall state the degree Baume and the percentum of sulphur. The certificate on each package shall be considered as constituting a guarantee to the purchaser of the contents therein."

Section 1177-30 provides that a copy of the certificates required to be attached by the foregoing section shall be filed with the Secretary of State.

Section 1177-31 defines insecticide and fungicide as follows:

"The term insecticide as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any insects which may infest vegetation, man or animals, or households, or be present, in any environment whatever. The term fungicide as used in this act (G. C., Sections 1177-29 to 1177-42) shall include any substance or mixture or substances intended to be used for preventing, destroying, repelling or mitigating any and all fungi that may infest vegetation or be present in any environment whatsoever.

Section 1177-32 provides as follows:

"It shall be unlawful for any person, firm or corporation to manufacture, sell or offer for sale in the state any arsenate of lead, Paris green, lime-sulphides, miscible combinations of mineral or vegetable oils, Bordeaux mixture, or any insecticide or fungicide or essential ingredient thereof used for the control of insects and fungus diseases within the state, which is adulterated or misbranded within the meaning of this act."

Section 1177-33 defines what is meant by adulteration, as used in the foregoing section.

Section 1177-34 defines the term "misbranded", as used in Section 1177-32, General Code.

Section 1177-35 prohibits dealers, agents and distributors from altering or changing materials from the form as received in the original package.

Section 1177-36 provides for the licensing of manufacturers and reads as follows:

"Before selling arsenate of lead, Paris green, lime-sulphides, miscible combinations of mineral or vegetable oils, bordeaux mixture or any insecticide or fungicide or essential ingredient thereof used for the control of insects or fungus diseases within the state, each person, firm or corporation who manufactures any of the aforementioned commodities shall each year pay to the secretary of agriculture a license fee of twenty dollars with each certificate filed. Upon application and payment of such fee said secretary shall issue a license for the current year. All licenses shall expire on the 31st day of December each year. The payment of such license fee by a person, firm or corporation shall exempt an agent thereof from the requirements of this section."

Sections 1177-37 to 1177-42, General Code, provide for the analysis of insecticides or fungicides by the secretary of agriculture, and establish a penalty for violation of the act.

In specific answer to your question, you are therefore advised that dealers in insecticides in Ohio need not be registered pharmacists or legally registered assistant pharmacists employed in a pharmacy or drug store under the management and control of a legally registered pharmacist, but must comply with the provisions of law herein discussed, viz., General Code, Sections 12663 to 12676, inclusive; Sections 12706 to 12708-5, inclusive, and Sections 1177-29 to 1177-49, inclusive.

Respectfully,
EDWARD C. TURNER,
Attorney General.