

performance to be carried out by and under the supervision of the county surveyor.

The whole subject of force account work was dealt with at considerable length in two recent opinions of this department of date September 10, 1921, being opinions Nos. 2411 and 2412, directed respectively to Hon. John R. King, prosecuting attorney, Columbus, Ohio, and Hon. Walter B. Moore, prosecuting attorney, Woodsfield, Ohio. Copies of these opinions are enclosed. It is believed that you will find that they practically answer the question you have in mind. However, it may be added that, as noted in opinion No. 2411, section 6948-1 is a statute of limited application, and merely authorizes the county commissioners to adopt the force account method instead of the contract method of completing road projects formally undertaken under sections 6906 et seq. So far then as the actual carrying out of the force account project is concerned, reference must be had to sections 7198 et seq. Moreover, you will find that sections 7184 and 7192 give the surveyor general charge of the construction, reconstruction, improvement, maintenance and repair of all bridges and highways under the jurisdiction of the county commissioners.

Under these conditions, it is perfectly plain that your county commissioners are not at liberty to employ a road foreman for force account work, but must follow the procedure outlined in section 7198 G. C.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2461.

PROHIBITION—WHAT ALCOHOLIC MEDICINAL PREPARATIONS PHYSICIANS MAY PRESCRIBE—AUTHORITY OF DRUGGISTS TO USE AND DISPENSE INTOXICATING LIQUORS—SHERRY WINE IS MEDICINAL PREPARATION FIT FOR BEVERAGE PURPOSES.

1. *Under the provisions of section 6212-15a G. C. a physician duly qualified as such under the national prohibition act, may within the limitations of the federal and state prohibition laws prescribe alcoholic medicinal preparations listed in the United States Pharmacopoeia or National Formulary when held by the prohibition commissioner to be fit for beverage purposes.*

2. *Druggists who have properly qualified to use and dispense intoxicating liquors under the national prohibition act may within the limitations of the national and state prohibition acts use and dispense alcoholic medicinal preparations listed in the National Formulary when held by the prohibition commissioner to be fit for beverage purposes.*

3. *Sherry wine is an alcoholic compound listed in the United States Pharmacopoeia and National Formulary as a medicinal preparation, and has been held by the prohibition commissioner to be fit for beverage purposes.*

COLUMBUS, OHIO, October 11, 1921.

HON. DON. V. PARKER, *Prohibition Commissioner, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads:

“I would like an opinion from your department on section 6212-15a of the General Code, this being part of the McCoy bill, as to the

rights of doctors to prescribe and druggists to use and sell sherry wine, as I understand that it is the only wine which the federal government classes for use in medicinal preparations, exempted under the latter half of that section."

Section 6212-15a G. C. (109 O. L. 194), to which you refer, provides as follows:

"Notwithstanding the provisions of section 6212-15 of the General Code, no intoxicating liquor except pure grain or ethyl alcohol or spirituous liquor in quantities of one-half pint in any period of ten days, for the aged, infirm and known sick or alcoholic medicinal preparations which have been named or hereafter shall be named by the federal prohibition commissioner and held to be fit for beverage purposes and listed in the U. S. P. and N. F. shall be manufactured, sold, prescribed or dispensed for medicinal purposes."

Without a consideration of section 6215 G. C., and its related sections referred to in the above quoted section, an analysis of the supplemental section above quoted clearly discloses that it was the intention of the legislature to limit the power of a physician to prescribe intoxicating liquor to "pure grain or ethyl alcohol or spirituous liquor," excepting as to those alcoholic medicinal preparations listed in the United States Pharmacopoeia and National Formulary, named or to be named by the federal prohibition commissioner to be fit for beverage purposes. In other words, it was the intent of the act to limit a physician's prescriptions to distilled liquors as contradistinguished from alcoholic compounds produced by fermentation, excepting as to those medicinal preparations fit for beverages which are listed in the National Formulary.

The following is quoted from the fourth edition of the National Formulary:

"Vinum Xericum
Sherry Wine
Vin. Xeric

An alcoholic liquid made by fermenting the juice of fresh ripe grapes, the fruit of cultivated species of *Vitis Linne* (Fam. Vitaceae) freed from seeds, stems and skins, and fortifying with pure grape brandy. It contains not less than sixteen per cent nor more than twenty-four per cent of C₂ H₅ O. H. by volume, when estimated as directed in the U. S. Pharmacopoeia IX. * * *

It will be observed from the above definition that sherry wine is neither distinctly a distilled spirit nor a fermented liquor, but rather is a compound of both distilled and fermented liquors. It is officially listed in the United States Pharmacopoeia as an alcoholic medicinal preparation, and therefore the only question now presented is whether or not this preparation has been named by the federal prohibition commissioner as being fit for beverage purposes under the provisions of section 6212-15a G. C.

In the Regulations issued by the federal prohibition commissioner, in Regulations No. 60, February 1, 1920, article XI sets forth a number of alcoholic medicinal preparations listed in the National Formulary which are held to be fit for beverage purposes. However, this list does not include

sherry wine. On March 2, 1921, by an order issued by the acting commissioner of internal revenues this list was supplemented, which supplement does not include sherry wine. However, section 60 of article XI of the Regulations above referred to, which relates to medicinal preparations unfit for beverage purposes, reads in part as follows :

“* * * (a) Such preparations must contain no more alcohol than is necessary for the purpose of extraction, solution or preservation, and must contain in each fluid ounce a dose as a whole or in compatible combination of one or more agents of recognized therapeutic value and contain no agents either chemically or physiologically incompatible with the active medicinal agents upon which the medicinal claims are based. * * *”

The following is quoted from article I of said Regulations, which relates to definitions, and is important to consider in connection with the paragraph from article XI above quoted :

“(b) The word ‘liquor’ or the phrase ‘intoxicating liquor’ shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of 1 per cent or more of alcohol by volume which are fit for use for beverage purposes.

This definition includes all preparations listed in article XI as being fit for use as beverages or for intoxicating beverage purposes; homeopathic potencies, attenuations and dilutions which are fit for use as beverages; and all other alcoholic compounds containing one-half of 1 per cent or more of alcohol by volume which do not conform to the standards prescribed by article XI.”

In considering the above definitions as to the requirements of the medicinal preparations unfit for beverage purposes and the definition as given by the National Formulary of sherry wine, it would seem quite clear that the prohibition commissioner has declared sherry wine to be an intoxicating liquor fit for beverage purposes, even though it is not specifically enumerated under the provisions of article XI. The general rule is given, which when applied, necessarily places sherry wine within the class of medicinal preparations fit for beverage purposes. However, this department has recently been further advised in a communication from Hon. Roy A. Haynes, federal prohibition commissioner, as follows :

“Sherry wine is a potable intoxicating liquor fit for use as a beverage and under the national prohibition act it may be prescribed by a physician for medicinal purposes.”

He also states that sherry wine is listed in the National Formulary.

It will be observed that section 6212-15a G. C. includes the manufacture, sale and dispensing of alcoholic liquids, and therefore what has heretofore been said in relation to the authority of a physician to prescribe the medicinal preparations referred to in said section will have equal application to the use and dispensing of such liquids by druggists. In this connection it would seem proper at this time to note that section 6212-15b provides that no

person shall use, sell, purchase, or prescribe alcoholic liquids unless he has first complied with the provisions of the national prohibition act relative to obtaining a permit, and this permit or a copy thereof is required to be filed with the prohibition commissioner of Ohio. It follows that a physician in prescribing the liquors referred to in section 6212-15a G. C. must comply with the provisions of the related sections of the Ohio act and also with the requirements of the federal act.

In view of the foregoing you are specifically advised as follows:

(1) Under the provisions of section 6212-15a G. C. a physician duly qualified as such under the national prohibition act, may within the limitations of the federal and state prohibition laws prescribe alcoholic medicinal preparations listed in the United States Pharmacopoeia or National Formulary when held by the prohibition commissioner to be fit for beverage purposes.

(2) Druggists who have properly qualified to use and dispense intoxicating liquors under the national prohibition act may within the limitations of the national and state prohibition acts use and dispense alcoholic medicinal preparations listed in the National Formulary when held by the prohibition commissioner to be fit for beverage purposes.

(3) Sherry wine is an alcoholic compound listed in the United States Pharmacopoeia and National Formulary as a medicinal preparation, and has been held by the prohibition commissioner to be fit for beverage purposes.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2462.

APPROVAL, FINAL RESOLUTIONS, ROAD IMPROVEMENTS, ALLEN,
CLARK AND PERRY COUNTIES, OHIO.

COLUMBUS, OHIO, October 11, 1921.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

2463.

APPROVAL, BONDS OF ELYRIA TOWNSHIP RURAL SCHOOL DISTRICT,
LORAIN COUNTY, OHIO, IN AMOUNT OF \$6,000.

COLUMBUS, OHIO, October 13, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.