

## OPINION NO. 75-065

**Syllabus:**

Where a pharmacist is required by local law or other regulation to post drug-price information, he is not "advertising" as would otherwise require statements and warnings to be made pursuant to R.C. 4729.36.

---

**To:** Frank E. Kunkel, Executive Secretary State Board of Pharmacy, Columbus, Ohio

**By:** William J. Brown, Attorney General, September 29, 1975

I have before me your request for an opinion in which you pose the following questions:

"1. Is the posting in a pharmacy of a display card bearing a list of the names of drugs of abuse including their retail prices considered advertising and, therefore, subject to the requirement of 'a brief statement of the use' and 'a warning of the specific harms resulting from abuse' in direct conjunction with each drug listed?

"2. Shall the 'brief statement of the use' be limited to the principal indication for using a particular drug or include all possible uses?

"3. Shall the 'warning of the specific harms resulting from abuse' be limited to the principal

harms from abusing a particular drug or include all possible harms?

In a telephone conversation subsequent to your request you stated that the Board of Pharmacy's principal concern is whether a pharmacist's posting of prices for drugs of abuse (as defined in R.C. 3719.011) pursuant to a municipal ordinance is advertising, such as would draw the requirements of R.C. 4729.36 into play. In that telephone conversation you also indicated that posting of drug prices pursuant to such an ordinance would only be done using preprinted poster forms required by the ordinance. These forms would contain no statement of drug uses or warnings of specific harms which result from drug abuses. Neither would the forms provide space for the individual pharmacists to insert such statements or warnings.

Your questions arise because statements of use and warnings relative to drug abuse are required to accompany any advertising of drugs of abuse by R.C. 4729.36, which provides in pertinent part:

"No pharmacy or pharmacists shall knowingly advertise by name or therapeutic class the availability for sale or dispensing of any drug of abuse as defined in section 3719.011 of the Revised Code, unless such advertising contains a brief statement of the use and a warning of the specific harms resulting from abuse of such drug of abuse in direct conjunction with such advertising."

It is apparent that the intent of the General Assembly in providing the above limitation was not to prohibit advertising, but was to ensure that where a pharmacist elects to promote the sale of drugs of abuse he do so in such a fashion that the consumer is made aware of the dangers which could be involved if such a substance were not properly administered. The instant situation, however, does not involve an election or independent decision of a pharmacist to promote the sale of drugs of abuse. Rather, the pharmacist is required to post drug price information by local ordinance. Accordingly, the issue here is whether the term "advertise" as contained in R.C. 4729.36 includes a required posting of drug-price information. I conclude that it does not.

The term advertise is not defined in R.C. 4729.36, or elsewhere in the Revised Code and it is, therefore, necessary to analyze that term according to its common usage. R.C. 1.42. However, the term advertise (or advertising) is not precise and is not easily defined in each case. See Amsel v. Brooks, 106 A. 2d 152 (Conn. 1954). On the one hand it may include labeling of drugs. See, e.g., United States v. Research Laboratories, 126 F. 2d 42 (9th Cir. 1942); cert. denied, 317 U.S. 656. On the other hand it may exclude articles and news releases. See Planned Parenthood Committee of Phoenix, Inc. v. Maricopa County, 375 P. 2d 719 (Arizona 1962). The consistently considered factor, however, relates to the purpose for which information is provided to the public. Where information is made public as a method of marketing goods or services, of generating sales, or of securing customers, it is advertising. See, e.g., State v. Guardian Foundation of Texas, 128 S.W. 2d 880 (Texas 1939).

In this instant situation the purpose of promoting sales is not present. The municipal ordinance is designed to assist the consumer by providing price information for comparison shopping. It is not designed to generate sales for the pharmacist.

Accordingly, it is my opinion and you are so advised that where a pharmacist is required by local law or other regulation to post drug-price information, he is not "advertising" as would otherwise require statements and warnings to be made pursuant to R.C. 4729.36.