

expenditures are to be paid, signifies that payments authorized thereby should be made from the general fund else they can not be made at all.

This conclusion is fortified by the fact that there could be no good reason assigned for providing that the dog and kennel fund should bear the expense incurred by reason of injuries caused by dogs, cats or other animals, afflicted with rabies. True, the dog and kennel fund is made up of moneys arising from fees for dog registration, but it does not have the advantage of any fees arising on account of the regulation or registration of cats and other animals and to burden such fund with the expenses incident to injuries caused by cats and other animals would not seem to be just.

It is my opinion therefore, that expenditures authorized by Sections 5851 and 5852, General Code, should be made from the general fund of the county.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1044.

APPROVAL, BONDS OF FRANKLIN TOWNSHIP RURAL SCHOOL DISTRICT, COSHOCTON COUNTY, OHIO—\$2,500.00.

COLUMBUS, OHIO, September 22, 1927.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1045.

APPROVAL, BONDS OF ALLEN COUNTY, OHIO, \$91,200.00.

COLUMBUS, OHIO, September 22, 1927.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1046.

ASPIRIN—WHO MAY SELL—WHETHER OR NOT HOUSEHOLD REMEDY, IS QUESTION OF FACT.

SYLLABUS:

1. *The sale or dispensing of aspirin by one 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, constitutes a*

violation of Section 12706 of the General Code, (1) unless the defendant was a physician supplying his patient with such medicine, or (2) unless he was a retail dealer and aspirin is a patent or proprietary medicine, or (3) unless aspirin be a household remedy similar to the other preparations named in the fourth exception contained in Section 12707, General Code, and the aspirin sold was compounded by a legally registered pharmacist and put up and sold 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.

2. *Whether or not aspirin be a household remedy similar to the other preparations named in the fourth exception of Section 12707, General Code, is a question of fact to be determined from the evidence including the testimony of experts qualified to testify.*

COLUMBUS, OHIO, September 22, 1927.

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

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

“At a recent meeting of our board I was directed to request an opinion from you on the sale of Acetylsalicylic Acid, commonly known as Aspirin.

Under the provisions of the Ohio law may any one except a legally registered pharmacist, or a legally registered assistant pharmacist employed in a pharmacy under the management and control of a legally registered pharmacist, sell aspirin?

We are informed that the Hon. John W. Reynolds, Attorney General for the State of Wisconsin, has recently ruled that aspirin cannot be sold by persons other than pharmacists.

In addition to the Ohio Statutes I would respectfully refer you to the United States Pharmacopoeia—10th revision, the United States Dispensatory—21st edition and Remington's Practice of Pharmacy—7th edition.”

Sections 12705, 12706 and 12707, General Code, provide as follows:

Sec. 12705. “Whoever, not being a legally registered pharmacist, manages or conducts a retail drug store unless he has in his employ in full and actual charge of the pharmaceutical department of such store, a pharmacist legally registered under the laws of this state, and, whoever being a legally registered pharmacist shall manage or conduct a retail drug store without being personally in full and actual charge of such store, or unless he has in his employ in full and actual charge of the pharmaceutical department of such store a pharmacist legally registered under the laws of this state, 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. A retail drug store, within the meaning of this section, shall be any room, rooms or place of business wherein drugs, poisons, chemicals or pharmaceutical preparations shall be offered or displayed for sale at retail, or upon which as a sign the words ‘pharmacy,’ ‘drugs,’ ‘drug store,’ ‘pharmacist,’ ‘pharmaceutical chemist,’ ‘apothecary’ or any of these words, or their equivalent in any language, are or is displayed.”

Sec. 12706. “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, com-

pounds, 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."

Sec. 12707. "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."

By the terms of Section 12706, supra, it is unlawful for any one, 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, to compound, dispense, or sell a drug, chemical, poison or pharmaceutical preparation. It is a matter of common knowledge that aspirin is a medicine or remedy and authority to show that it is embraced within the terms "drugs, chemicals, * * * or pharmaceutical preparations" is unnecessary.

Section 12707, supra, enumerates certain exceptions to which the penal provisions of Sections 12705 and 12706, supra, do not apply, it being provided in such sections that the provisions of Sections 12705 and 12706 do not apply to:

1. A physician or prevent him from supplying his patients with such medicines as to him seems proper.
2. The making or vending of patent or proprietary medicines by a retail dealer.
3. 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.
4. The 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 their use on each bottle or box.

A recent case involving a question similar to that which you present is *State vs. Zotalis*, reported in 214 N. W. 766, (Supreme Court Minnesota, decided July 8, 1927) the syllabus of which reads:

"Gen. St. 1923, Section 5814, restricting the sales of drugs, medicines and poisons with certain exceptions, to pharmacists and sellers employing a pharmacist, except when the shop of the seller is more than two miles from a drug store, is a constitutional exercise of the police power and valid when applied to sales of aspirin."

The defendant conducted a confectionery store in Minneapolis. He was not a pharmacist and did not employ one. He sold aspirin and for selling it was convicted in the Municipal Court of Minneapolis for the violation of G. S. 1923, Section 5814. The aspirin was in a container, with a label stating that it contained five grain aspirin tablets, that a dose was one or two tablets, and that it was distributed by a designated laboratory and chemical company of Minneapolis. The judgment of the lower court was affirmed.

Judge Dibell, who wrote the opinion, used the following language:

"G. S. 1923, Section 5805, provides that the term 'drugs, medicines and poisons' shall include all substances commonly kept in drug stores and used in compounding medicines or sold for medicinal purposes. Aspirin is a coal tar product commonly kept in drug stores and is used and sold for medicinal purposes. It is a drug or medicine within the statute. It is not a proprietary or patent medicine."

The value of this decision as an indication of what the result might be of a prosecution based upon the laws of Ohio upon similar facts is materially lessened when one compares the statutes of Ohio and Minnesota.

G. S. 1923, Section 5814 of the laws of Minnesota is analogous to Section 12706, General Code of Ohio, and so far as pertinent provides:

"No person, not a registered pharmacist or a dealer employing and keeping such a pharmacist in active charge of his place of business shall retail, compound or dispense drugs, medicines or poisons, or keep or conduct a place for retailing, compounding or dispensing drugs, medicines, or poisons, or falsely assume or pretend to the title of a registered pharmacist. * * * Every person violating any provision of this section shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars except in cases where the death of a human being results from such violation, when the person offending is guilty of a felony."

G. S. 1923, Section 5805, enumerates certain exceptions and provides:

"Drugs, medicines and poisons, for the purposes of this subdivision, shall include all substances commonly kept in drug stores and used in compounding medicines or sold for medicinal purposes. Nothing in this subdivision, however, shall prevent a physician from compounding prescriptions for use in his practice or furnishing to his patients such articles as he deems proper, or interfere with the making or vending of proprietary medicines, with any exclusively wholesale business, or with the sale by general retail dealers of the following articles: alum, blue vitriol, borax, carbonate of ammonia, carbonate of soda, castor oil, copperas, epsom salts, glauber salts, glycerin, gum arabic, gum camphor, licorice, log wood, rolled sulphur, saltpetre, senna leaves, sublimed sulphur, water of ammonia, arsenate of lead, sodium arsenite, London purple, arsenous oxide or Paris green in sealed packages dis-

tinctly labeled 'arsenate of lead,' 'sodium arsenite,' 'London purple,' 'arsenous oxide,' 'arsenate calcium' and 'arsenite of zinc,' or 'Paris green' as the case may be, 'poison.' Nor shall any dealer whose shop is more than two miles from a drug store be thus prevented from selling any commonly used medicine or poison which has been put up for such sale by a registered pharmacist."

Although G. S. 1923, Section 5805, is analogous to Section 12707, General Code, the exceptions enumerated in the Ohio statute are somewhat broader in scope than those of the Minnesota law, and in addition, contains the words "other similar preparations," etc., which has the effect of enlarging the number of the remedies specifically named. It would be a complete defense to a charge of violating Section 12706, General Code, to prove that the defendant came within any of the four exceptions of Section 12707, *supra*, above classified.

With reference to the fourth exception, *supra*, in an opinion rendered under date of September 27, 1912, reported in Annual Report of the Attorney General, 1912, Vol. I, page 860, this department held as follows:

"Carbolic acid is a poison within the meaning of Section 12706, General Code. The words and 'other similar preparations' as employed in Section 12707, General Code, which enumerates a number of exceptions to 12706, General Code, are construed to mean 'other household remedies.' As carbolic acid is of a more dangerous character than the articles so enumerated and as it cannot properly be classed as a 'household remedy,' it is not included within the exceptions, and a grocer selling the same contrary to Section 12666 or 12706, General Code, is liable for the penalties therein provided."

In the opinion my predecessor in office said at page 861:

"The question arises, therefore, as to whether or not carbolic acid can be considered and included within the term 'other similar preparations' as used in said Section 12707, General Code. I am informed that none of the preparations specifically set forth in said section have any similarity one to another, and I have heretofore construed the words 'other similar preparations' to mean what is generally known as 'household remedies' for the reason that the preparations as set forth are what are generally known as such household remedies. However, none of such preparations are in themselves dangerous, nor would they be necessarily fatal if taken contrary to the usual directions for the use thereof. It is well known that carbolic acid is an exceptionally dangerous poison and that it is often used with suicidal intent, being in fact one of the most usual poisons taken to accomplish self-destruction. It is also very doubtful that the same could under any circumstances be considered as a household remedy as said term is usually understood, and I am unwilling to consider it as such unless it is clearly proven so to be, or clearly shown to be within the exception contained in Section 12707, General Code."

In view of the fact that, as pointed out by my predecessor in office in the opinion of 1912, *supra*, none of the drugs or preparations detailed in the fourth exception of Section 12707, *supra*, have any similarity to the other preparations named, I concur in the conclusion that the legislature intended to include in the phrase "other similar preparations" those preparations commonly known as "household remedies."

Whether or not aspirin be a common household remedy and thus one of the "other similar preparations" to be excepted from the operation of Section 12706, *supra*, is a question of fact determinable from the evidence including the testimony of wit-

nesses qualified to testify. Obviously your board is in a much better position to decide this question than this department, whose decision would of necessity have to be based upon such information as the members of your board and other qualified experts could furnish.

If your board should determine that aspirin is a pharmaceutical preparation not similar to those classified in the fourth exception of Section 12707, *supra*, this department will of course cooperate in the preparation of the necessary evidence and will represent the state in a proper case should you see fit to prefer charges under the sections of the Code above set forth.

I have not commented on the first three exceptions contained in Section 12707, *supra*, because a discussion thereof is deemed unnecessary.

From what has been said in reply to your communication it is my opinion that :

1. The sale or dispensing of aspirin by one 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, constitutes a violation of Section 12706 of the General Code, (1) unless the defendant was a physician supplying his patient with such medicine, or (2) unless he was a retail dealer and aspirin is a patent or proprietary medicine, or (3) unless aspirin be a household remedy similar to the other preparations named in the fourth exception contained in Section 12707, General Code, and the aspirin sold was compounded by a legally registered pharmacist and put up and sold 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.

2. Whether or not aspirin be a household remedy similar to the other preparations named in the fourth exception of Section 12707, General Code, is a question of fact to be determined from the evidence including the testimony of experts qualified to testify.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1047.

MUNICIPAL CORPORATION—MAY EXPEND PUBLIC FUNDS FOR
BUSSES—MAY SELL BONDS.

SYLLABUS:

A municipal corporation may expend public funds for the acquiring of busses to be used in the operation of a system of transportation for passengers or freight, within the municipality, and funds may be procured therefor by the sale of bonds subject to the same statutory requirements and limitations as is provided for and imposed upon the issuing of bonds for other municipal purposes, including Sections 2293-1 and 2293-2, General Code.

COLUMBUS, OHIO, September 23, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN :—This will acknowledge receipt of your recent communication requesting my opinion, which reads as follows :