



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

April 7, 1936

Honorable Burt Ford
Administrator Liquor Control Board
Austin, Texas

Dear Sir;

Opinion No. 0-537

Re: Drug store operated by
licensed physician but
not registered with the
State Board of Pharmacy
is not a bona fide phar-
macy under the provis-
ions of Section 18 of
Article 666 of the Penal
Code.

In your letter of March 23, 1936, you inquire whether a pharmacy owned and operated by a licensed physician, which pharmacy is not registered with the State Board of Pharmacy, and does not employ a registered pharmacist, is a bona fide pharmacy under the meaning of the Texas Liquor Control Act.

Article 4540 Revised Statutes provides in general terms that a pharmacy may not be operated by any one not a licensed pharmacist. After so providing, the statute then states:

"Nothing in this Article shall be construed to prevent any person from engaging in the business herein described as proprietor and owner thereof, provided such proprietor or owner shall have employed in his business to conduct same someone qualified under this chapter, nor to interfere with any legally registered practitioner of medicine or dentistry in the compounding of his prescriptions, or to prevent him from supplying his patients such medicine as he may deem proper."

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Section 18 of Article 666 Penal Code, among other things, provides:

"Any pharmacy for which a permit is sought must be a bona fide pharmacy, registered with the State Board of Pharmacy, must employ and have on duty at all times a registered pharmacist, and must have been in operation as a pharmacy for two years in the particular political subdivision in which his permit is sought."

The saving clause above quoted from Article 4540 does not make the physician a pharmacist. It does not put into the previous portions of the article something which was not there before. Its purpose was not to make the physician a pharmacist but to exempt him from the requirement that he be a licensed pharmacist.

The Liquor Control Act defines a bona fide pharmacy, and among other requirements, is the requirement that the pharmacy be registered, and must have on duty at all times a registered pharmacist.

We therefore answer that a pharmacy, under the definition of the statute, is not a bona fide pharmacy unless it is registered with the State Board of Pharmacy, and unless it has at all times a registered pharmacist.

What we have said, we think, makes it unnecessary to answer your second and third inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS


By



A. S. Rollins
Assistant

ASH-MR

APPROVED:



ATTORNEY GENERAL OF TEXAS