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## ARIZONA ATTORNEY GENERAL

August 1, 1955  
Opinion No. 55-170

REQUESTED BY: Honorable Bernard T. Caine, County Attorney  
Mohave County, Kingman, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General  
H. B. Daniels, Assistant Attorney General

QUESTION: The Mohave General Hospital is owned, maintained, operated and controlled exclusively by Mohave County. Is the Mohave General Hospital required to have a Pharmacy Permit, when it stocks drugs only for administration to patients?

CONCLUSION: Yes, the hospital is required to have a Pharmacy Permit.

It is well settled that the Legislature, in the exercise of its police power, may regulate the practice of pharmacy, so long as such regulation is directed to the preservation of the public health and safety. Stewart v. Robertson, 45 Ariz. 143; State v. Childs, 32 Ariz. 222, 54 A.L.R. 736.

The regulation of the practice of pharmacy and the sale, compounding and distribution of drugs is found in Sections 67-1501 thru 67-1528, ACA, 1939, as amended. To resolve the issue presented, we look to the entire Pharmacy Act. We direct attention to the following pertinent sections of the code.

Under Section 67-1512, ACA, 1939, as amended, 1952 cum. supp., the following language is used:

"The board of pharmacy shall require and provide annual registration of every . . . dispensary. . . or any other place of business in which or from which drugs, medicinal chemicals, medicine, . . . are sold, retailed, compounded, . . . stocked, . . . manufactured, or offered for sale. . . in this state. Any person, firm, corporation, or copartnership desiring to operate, maintain, manufacture, open or establish a . . . dispensary. . . or any other place of business in which or from which drugs, medicinal chemicals, medicines, poisons, . . . are sold. . . dispensed, stocked. . . in this state, shall apply to the board of pharmacy for a permit. . . to do so."  
(Emphasis supplied)

The act does two things: (1) It requires the Board to register annually everyone dealing in the business of drugs, medicine,

medicinal chemical or poisons; (2) requires that persons dealing in these products apply to the Board for permission to engage in the business. These are limitations.

Section 67-1506, ACA, 1939, as amended, 1954 Supp. provides that it is unlawful for any person to make, compound, sell or dispense drugs, medicines or chemicals or prepare prescriptions, unless he is licensed, except in the case of doctors, who may carry drugs and medicines for emergencies to administer to patients or in the case of licensed wholesalers and manufacturers, selling to persons or firms duly licensed.

Reading these two sections together, we think that the Mohave General Hospital is not excluded from the operation of these two acts, but looking further into the code, the following provision is found in Section 67-1522, ACA, 1939, as amended, cum. supp. 1952:

"67-1522. Practice of Pharmacy in hospitals.--  
Definitions: (a) 'Practice of pharmacy in hospitals' shall mean the manufacturing, compounding, selling, or dispensing of any drug or medicine in a hospital. (b) 'Hospital' shall mean any institution for the care \* \* \* of the sick and injured approved and licensed by the Arizona state board of health. \* \* \*

The pharmacy operating in connection with the hospital shall comply with all the provisions of this act requiring registration of drug stores and pharmacies and with all regulations of the Arizona state board of pharmacy; \* \* \*

(Emphasis supplied)

It is plain by the foregoing provision that the Legislature intended to regulate all hospitals, licensed as such, in the practice of pharmacy and the sale, dispensing and compounding of drugs, medicines or medical chemicals. We think that the intent here was to control the drug business in Mohave General Hospital, as well as private hospitals.

A related opinion from this office has held that a municipality, county, or school district must be licensed by the Board of Pharmacy to buy and sell drugs, medicines or medicinal chemicals. (Opinion No. 53-111).

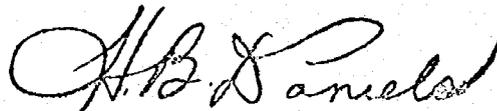
It must be clearly understood that the fee assessed here is not a tax, but a regulatory fee assessed for the purpose of regulating the manufacture, sale and distribution of drugs, as well as the practice of pharmacy. To require such a fee, is within the scope of the Legislature under its police power. This proposition is so well established, it is not necessary to cite authorities.

Honorable Bernard T. Caine  
Mohave County Attorney

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For the foregoing reasons, it is the opinion of the Department of Law that the Mohave General Hospital must secure from the board a license or permit to dispense, stock, sell, manufacture or compound drugs, medicines or medicinal chemicals, in the same manner as any other hospital licensed in the State of Arizona.

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