

**DRUGS AND DRUG STORES: Election of Secretary.  
PHARMACY, BOARD OF:**

The new pharmacy act, Act 151, P.A. 1962, does not affect the tenure of the board but does affect the tenure of the present director of drugs and drug stores.

After the effective date of Act 151, P.A. 1962, the board would have to elect a secretary to replace the director of drugs and drug stores appointed under the former pharmacy act.

No. 4153

March 27, 1963.

Mr. David M. Moss, Director  
Drugs and Drug Stores  
Michigan Board of Pharmacy  
115 Stevens T. Mason Building  
Lansing, Michigan

You have asked my opinion on the following questions:

1. Does Act 151 of the Public and Local Acts of the Legislature of the State of Michigan passed at the regular session of 1962 and effective on March 28, 1963 affect the tenure of the present board?
2. How does this act affect the status and tenure of the present director of drugs and drug stores?
3. Does this act officially change the title of the director of drugs and drug stores to executive secretary?
4. Does the board have to rehire the director or executive secretary when this act becomes effective on March 28, 1963?

I answer your questions seriatim:

1. Sec. 2 (1) of Act 151, P.A. 1962<sup>1</sup> provides in pertinent part that "The members of the existing state board of pharmacy heretofore appointed, shall continue in office for the duration of their present terms, and act as the state board of pharmacy in compliance with the provisions of this act."

It is obvious, therefore, that the legislature intended that Act 151, P.A. 1962, would not have any effect on the tenure of the present board.

2. Section 4 (1) of Act 151, P.A. 1962, provides that the board shall elect annually a secretary who shall be the executive secretary and director<sup>2</sup> of the board. There is no provision in this act for the appointment or continuation of the director of drugs and drug stores, which position was created by Act 134, P.A. 1885, as amended, and repealed by Act 151, P.A. 1962. The legislature intended that the director of drugs and drug stores would be replaced by the secretary; and has divided the duties of the former director between the secretary and the board.

<sup>1</sup> M.S.A. Current Material § 14.757(2).

<sup>2</sup> Sec. 1 (t): "'Secretary' means the secretary and director of the state board of pharmacy."

3. Act 151, P.A. 1962, makes no provision for a director of drugs and drug stores. This officer is replaced by the secretary.

4. The board will have to elect a secretary on or after the effective date of the act, March 28, 1963, to perform those duties prescribed by Sec. 4 (2) of the act and to serve until the next annual election and qualification of a successor. The requirement of the statute that the "board shall elect annually a secretary" would not fix any specific time to do so, but rather leaves it to the direction of the board to select the date. The only mandate is that the election is made once in a year. *McMaster v. New York Life Insurance Company*, 99 Fed. 856.

FRANK J. KELLEY,  
*Attorney General.*

630404.1

**SUNDAY CLOSING LAW: Exemption provisions construed – closing of stores owned by same person or legal entity.**

Act 128, P.A. 1962, exempts from its provisions any retail store where food is sold for consumption away from the premises in which are employed not more than two proprietors and one other person at any one time. The phrase "at any one time" construed and applied for purposes of exemption in determining the number of persons employed in a retail store.

All of the retail stores where food is sold for consumption away from the premises in Michigan owned and managed by the same person or legal entity which are subject to Act 128, P.A. 1962, are deemed a single entity for the purpose of selecting the Saturday or Sunday as the day of refraining from prohibited transactions. Whether a store is exempt from the provisions of Act 128, P. A. 1962, is to be determined at each separate location by application of the tests for exemption.

No. 4147

April 4, 1963.

Honorable James H. Karoub  
State Representative  
The Capitol  
Lansing, Michigan

You have requested an opinion of this office as to the interpretation of Act No. 128, P.A. 1962.<sup>1</sup> The act prohibits the sale, trade or exchange, or the offer to sell, trade or exchange on both of any successive Saturdays and Sundays of certain tangible personalty specified in section 1 of the act.

Section 2 of the act provides exceptions by specifying certain tangible personal property which may be sold, exchanged or traded or offered for sale, trade or exchange during seven days of the week. In pertinent part, section 2 provides:

"Nothing in this act shall be construed to prohibit any sale of \* \* \* food for consumption away from the premises where sold if grown on

<sup>1</sup> Sections of this act have been assigned C.L. section nos. 435.51 et seq. and M.S.A. section nos. 18.857(1) et seq.