

WHAT BOARDS OF PHARMACY CAN DO TO RAISE THE REQUIREMENTS FOR REGISTRATION.

IT is quite probable, judging from their activities, that but few boards of pharmacy have realized the full extent of the powers conferred by the law which they are appointed to enforce.

One very well settled principle of statutory construction is that when an official body is expressly empowered to discharge a specific function the grant of express powers carries with it such implied powers as are necessary to carry the expressed powers into effect. If it were not so, boards and commissions would frequently be incapable of discharging the functions imposed upon them, since the infirmities of human foresight, and the limitations of languages are such that it is practically impossible to provide in advance for all the possible contingencies of administration, or to meet the devices of those who would evade the spirit of the law while apparently complying with its literal verbiage.

While the general rule is as above stated there are limits, of course, to the extent to which implied powers can be read into a grant of express powers.

For example, it is well settled that a board cannot change the meaning of the law, or extend the scope of its provisions beyond the limits set by the legislature, or in other words that it cannot adopt rules and regulations which would operate to diminish the rights or increase the responsibilities of those affected by the law, or which would make criminal any act not criminal under the law itself, because such functions belong exclusively to the regularly constituted law-making body, and cannot be delegated to others.

In determining the nature and extent of implied powers we also must not lose sight of the fact that statute law is largely a matter of definition, and hence that the manner in which an official act is discharged, or its legal form, may have as much to do in determining its validity as the character of the act itself, i. e., that an executive act may be valid in one form and invalid in another, though in substance and effect both may be practically the same.

It probably will not be seriously disputed that the purpose of the board examination is to test the candidate's fitness to practice pharmacy with safety to the public. The manner in which the test is to be made is always left largely, and in many cases, wholly to the discretion of the board. The fact to be determined is made clear in the law, but the manner of its determination, and the final decision as to the abilities of the candidate are matters entirely within the board's official discretion.

I hold, therefore, that the board of pharmacy may properly include in an examination anything and everything it deems necessary to test the candidate's fitness for registration, provided the inclusion is made in proper manner and form.

As an example of a possibly improper method of exercising official discretion, suppose the board should adopt a formal rule that only high school graduates or graduates from a college of pharmacy would be registered. The court might overthrow the rule upon the ground that it imposed an obligation not imposed by the law. The court would likely say that it was the business of the board to test the present fitness of the candidate, not the manner in which it was obtained.

On the other hand, suppose the board avoids all such formally expressed rules, and instead should set an examination based entirely upon the Pharmacopœia, but one that would require the ability and training which an average high school graduate might be supposed to possess in order to pass. In this case I am inclined to think the court would very likely sustain the board's action; for the Pharmacopœia is a part of the law, and the pharmacist must comply with it, an obvious impossibility unless he can interpret its language and solve the problems based upon the official processes. It would be unreasonable to suppose that the court would not uphold the board in requiring the candidate to show that he can do the very things which the law says he must be able to do.

If the logic of the above illustration is sound, then without further legislation the boards have the power to enforce all proper educational requirements.

In the writer's opinion the difficulty of the board would be not so much in satisfying the courts as to the reasonableness of their action, as in satisfying the druggists who want cheap clerks, and who in their anxiety to get them lose sight of the fact that cheap clerks sooner or later develop into cheap competitors.

As a matter of fact, it is this short-sightedness that has been largely responsible for the multiplication of drug stores beyond the needs of the population, at the same time decreasing the visible supply of clerks, and also the ability of their employers to pay them reasonable salaries.

To illustrate, suppose that in a given district there is business enough to just comfortably support one store conducted by the proprietor and one clerk, and suppose the clerk leaves his employer and sets up a competing store. There is now a demand for two clerks instead of one, while the volume of business from which each is to be paid has been halved.

As a consequence both employers seek to obtain still cheaper help, and thus the vicious circle is perpetuated; for it is natural for the employe who is overworked and underpaid to imagine that his position would be better if he had a store of his own, so there is a constant tendency to multiply stores to the point where they will barely pay running expenses. Of course the stores which do not pay running expenses are eventually eliminated by the joint action of the sheriff and insolvency court, but leaving the local trade demoralized, and a tendency for the situation to repeat itself after the former disaster has been forgotten.

The program for the correcting of this excessive competition—if it is capable of correction—has not yet been worked out, but certainly one of the first steps is in the cultivation of the broad-mindedness that will on the one hand prompt the employer to pay the faithful employe as nearly the value of his services as his business will permit, and on the other hand will lead the clerk to prefer a reasonable salary to the doubtful privilege of owning a store that barely pays running expenses, or one that is drifting toward certain bankruptcy.

The part of the board of pharmacy in this program is to use to the limit their authority to require thorough and complete educational preparation on the part of those who are to become the managers and proprietors of drug stores.

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