

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

yes ✓

April 29, 1965

Honorable Charlotte White
House of Representatives
State House
Augusta, Maine

Dear Representative White:

You have requested my opinion as to the constitutionality of L. D. 1323, an act relating to the registration of apothecary stores. Title 32 § 2901 of the Revised Statutes presently requires anyone desiring to operate an apothecary or drug store to obtain a permit from the Board of Commissioners of the Profession of Pharmacy. The section requires that before the permit is granted, the Board must be satisfied that first, the store will be conducted in full compliance with the laws and the rules and regulations of the Board; second, that the store is so situated that it can be operated without endangering public health or safety; and lastly, that the store be under the personal supervision of a registered pharmacist.

The proposed L. D. 1323 would add a new requirement-- that the store must be owned to the extent of at least 51 per cent by a pharmacist or assistant pharmacist or that in the case of a corporately operated store that 51 per cent of the interest be owned by a registered pharmacist.

It would appear to be quite clear that the proposed legislation would violate the due process clause of the Fourteenth Amendment of the United States Constitution. The following statement is found in 17A American Jurisprudence, Drugs and Drug Stores, § 14: "A statute confining ownership of drug stores to registered pharmacists is clearly unconstitutional as violating the due process clause of the Fourteenth Amendment to the Federal Constitution."

Similar legislation was considered by the United States Supreme Court in the case of Liggett Company v. Baldridge, 278 U. S. 105, 73 L. Ed. 204. In this case, the United States Supreme Court considered an attack on a Pennsylvania statute which provided in substance that every drug store should be owned by a licensed pharmacist and provided that no corporation or firm could own a drug store unless all the members were registered pharmacists. The statute contained a grandfather clause as does L. D. 1323. The Court stated that unless the statute could be justified as a valid exercise of the police power, the act must be declared unconstitutional because it would deprive Liggett Company of its property without due process of law. The pertinent question was stated to be, What is the effect of mere ownership of a drug store in respect to the public health? It was pointed out that existing Pennsylvania statutes prohibited the prescribing of drugs by anyone but a licensed physician, that no one but a registered pharmacist could have charge of a drug store, that every drug store must be registered and this could only be done where the management was in charge of a registered pharmacist, that there were stringent provisions to prevent the possession or sale of impure drugs, that only registered pharmacists could compound prescriptions, and that the supervision of these matters were in the hands of a state board of pharmacy. The Court concluded that it would seem obvious that every point at which the public health was likely to be injuriously affected by the act of the owner in buying, compounding and selling drugs was amply safeguarded. "In the light of the various requirements of the Pennsylvania statutes, it is made clear, if it were otherwise doubtful, that mere store ownership in a corporation owning and operating a drug store can have no real or substantial relation to the public health and that the act in question creates an unreasonable and unnecessary restriction upon private business."

The Court further stated as follows: "A state cannot under the guise of protecting the public arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them."

It would appear that our present pharmacy law and the proposed L. D. fall clearly within the precedent of this United States Supreme Court decision. We have, just as Pennsylvania did, extensive laws dealing with the registration of pharmacists, drug stores, the compounding of prescriptions, and we have a Board of Pharmacy to supervise and enforce these laws. I am accordingly of the opinion that the proposed

April 29, 1965

Legislative Document 1323 would violate the constitutional guarantees of the Fourteenth Amendment of the Federal Constitution.

Yours very truly,

Richard J. Dubord
Attorney General

RJD/eh