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1. LIVESTOCK REMEDIES OFFERED FOR SALE IN OHIO—REQUIRED TO BE REGISTERED AND FULL FEE PAID BY MANUFACTURER OR PERSON RESPONSIBLE FOR PLACING REMEDY ON MARKET—AMENDED SUBSTITUTE HOUSE BILL 567, 98 GENERAL ASSEMBLY—PERIOD OCTOBER 27, 1949, EFFECTIVE DATE OF ACT TO DECEMBER 31, 1949.
2. EFFECT OF ACT ON MANUFACTURERS OF “REGULATORS, CONDITIONERS, TONICS AND ANIMAL APPETIZERS”—OFFERED FOR SALE IN OHIO—REGISTRATION—LIVESTOCK REMEDIES.
3. INSECTICIDES AND FUNGICIDES—THOSE WHICH FALL WITHIN DEFINITION OF LIVESTOCK REMEDIES—LICENSED UNDER SECTION 1177-36 G. C.—HAVE TO BE REGISTERED AND FULL FEE PAID IN ACCORDANCE WITH LIVESTOCK REMEDY PROVISIONS OF ACT, PERIOD OCTOBER 27 TO DECEMBER 31, 1949.

## SYLLABUS:

1. Am. Sub. H. B. No. 567, 98th General Assembly, requires that all livestock remedies offered for sale in Ohio be registered and the full fee therefor be paid by the manufacturer or person responsible for placing such remedy on the market, for the period October 27, 1949, the effective date of said Act, to December 31, 1949.

2. Manufacturers of “regulators, conditioners, tonics and animal appetizers” offered for sale in Ohio, whose products are registered for the current calendar year under the Feedstuff Law, will not be required upon the effective date of Am. Sub. H. B. No. 567, 98th General Assembly, to register such products as livestock remedies, by virtue of Section 4, paragraph (e) of said Act which in effect exempts such products from registration during the current calendar year. However, upon the expiration of the present registration, such products must be registered and the fee paid in accordance with the livestock remedy provisions of Am. Sub. H. B. No. 567, 98th General Assembly.

3. Insecticides and fungicides which fall within the definition of livestock remedies as defined in Am. Sub. H. B. No. 567, 98th General Assembly, and which have been licensed for the current calendar year under Section 1177-36, General Code, will also have to be registered and the full fee therefor paid in accordance with the livestock remedy provisions of said Act, for the period October 27 to December 31, 1949.

Columbus, Ohio, October 25, 1949

Hon. H. S. Foust, Director, Department of Agriculture  
Columbus, Ohio

Dear Sir :

The request of your predecessor for my opinion reads as follows:

"Your informal opinion is requested on questions itemized below which have arisen in connection with administration of the provision of Sub. H. B. No. 567, as amended, known as the 'Livestock Remedy Bill', which is expected to become law on October 27, 1949.

"(1) Under the provisions of Am. Sub. H. B. No. 567, a manufacturer of livestock remedies is required to pay to the State of Ohio an annual registration fee of twenty-five dollars (\$25.00) for each remedy registered and offered for sale in this State. All certificates of registration expire on December 31, of each year. In the event this bill becomes law, will all manufacturers of livestock remedies, subject to the provisions of this bill, be required to pay the full annual twenty-five dollars (\$25.00) registration fee for the period October 27 to December 31, 1949, inclusive?

"(2) Am. Sub. H. B. No. 567 amends Sections 1143 to 1147 of the General Code of Ohio deleting the words 'regulators, conditioners, tonics, animal appetizers' which, in effect, will transfer the requirement for registration of such commodities from the Feedstuff Law to the new Livestock Remedy Law. In the event Am. Sub. H. B. No. 567 becomes law, will all manufacturers of regulators, conditioners, tonics and animal appetizers now holding a license, valid until December 31, 1949 under Section 1143 of the General Code of Ohio, and subject to the provisions of Am. Sub. H. B. No. 567, be required to register such commodities on October 27, 1949, under the Livestock Remedy Law, and pay the twenty-five dollars (\$25.00) registration fee for the remainder of the 1949 calendar year, without refund of any license fees already paid as prescribed under the Feedstuffs Law?

"(3) Am. Sub. H. B. No. 567 requires that the manufacturer of insecticides and fungicides, intended for use in controlling internal and external parasites of livestock, register his products and pay the prescribed annual license fee. Registration of all insecticides and fungicides is required under Sections 1177-29 to 1177-42 of the General Code, however, no license fees, as specified in Section 1177-36 of the General Code, have

been collected by the State of Ohio in many years due to a permanent injunction, voiding the fee section, issued by the Franklin County Court about 1914. Am. Sub. H. B. No. 567 proposes to repeal Sections 1177-29 to 1177-36, inclusive, of the General Code. In the event Am. Sub. H. B. No. 567 becomes law, will all manufacturers selling insecticides and fungicides, to be used as livestock remedies, now holding a license valid until December 31, 1949, granted under Sections 1177-29 to 1177-36 of the General Code, be required to register such commodities on October 27, 1949 under the Livestock Remedy Law and pay a twenty-five dollar (\$25.00) registration fee for the remainder of the 1949 calendar year?"

Your first question concerns payment of the registration fee for livestock remedies provided for in Am. Sub. H. B. No. 567, 98th General Assembly, for the period October 27 to December 31, 1949. Section 4 of said Act requires, among other things, that all livestock remedies offered for sale in Ohio be registered by the manufacturer or person responsible for placing such livestock remedy on the market. It is also provided that the certificate of registration, issued upon the payment of a \$25.00 registration fee, "shall be issued for a period not exceeding one year, expiring on December 31 of each year" (Section 4, paragraph (c)). Sections 5 and 6 of Am. Sub. H. B. No. 567 provide in pertinent part as follows:

Section 5:

"(a) The director shall, prior to the issuance of a certificate of registration for any livestock remedy, collect from the applicant therefor a registration fee of twenty-five dollars for each separate and distinct article registered; provided that when a livestock remedy has been registered and the registration fee paid by the manufacturer or distributor, no other person shall be required to pay such fee.

"(b) Registration of any livestock remedy may be continued in force and effect upon the payment of an annual renewal fee of twenty-five dollars for each separate and distinct product registered; provided, that such re-registration must be applied for and all renewal fees paid on or before January 31st of each year. \* \* \*"

Section 6:

"All license fees and fines collected in accordance with provision of this act shall be deposited with the state treasurer in a rotary fund to be known as 'the livestock remedies inspection and laboratory fund' which is hereby established. Such fund is

hereby appropriated and may be expended or obligated by the director, as soon as money is deposited in such rotary fund for defrayment of the cost of administration of this act. \* \* \*

In seeking an answer to your first question, I am impressed by the choice of words used in Section 4, paragraph (c), quoted in the preceding paragraph. The language used indicates to me that the legislature anticipated that the initial registration under the Act would require, at least with respect to livestock remedies being sold in Ohio on the effective date of the Act, the payment of the full \$25.00 fee for periods of less than one year. It is interesting to note that the registration fee is referred to as an annual fee only in connection with renewal of the registration provided for in Section 5, paragraph (b), *supra*. There is no provision for payment of less than the full fee. Also significant is the fact that the fees collected are to be placed in a rotary fund from which disbursements will be made to defray the cost of administering the Act. I think this, too, indicates that the legislature intended the fee requirement to become effective at the same time as the other provisions of the Act since there will be no funds to administer the Act until fees are paid. Finally, the sale, delivery, holding or offering for sale of any livestock remedy which has not been registered as provided in Section 4 is made unlawful by Section 3 of the Act, which further emphasizes that the registration of livestock remedies must occur on the effective date of said Act.

Therefore, in answer to your first question, I am of the opinion that Am. Sub. H. B. No. 567, 98th General Assembly, requires that all livestock remedies offered for sale in Ohio be registered and the full fee therefor be paid by the manufacturer or person responsible for placing such remedy on the market for the period October 27, 1949, the effective date of said Act, to December 31, 1949.

In your second question you point out that the amendments to Sections 1143 to 1147, General Code, made by Am. Sub. H. B. No. 567 will, in effect, transfer the requirement for registration of "regulators, conditioners, tonics and animal appetizers" from the Feedstuff Law (Sections 1141-1 to 1149-2, General Code) to the Livestock Remedy Law. You ask whether the manufacturers of the products so affected will be required to register such products as livestock remedies and pay the registration fee therefor from the effective date of Am. Sub. H. B. No. 567 to December 31, 1949.

I believe this question is answered by Section 4, paragraph (e) of said Act, which reads as follows:

“Nothing in this act shall apply to any product registered with the director under the provisions of General Code, sections 1141 to 1149-2 inclusive.”

In my opinion the clear intention and effect of this provision is to exempt all products currently registered under the Feedstuff Law from registration during the current year under the livestock remedy provisions of Am. Sub. H. B. No. 567. Of course, upon expiration of the current registration, the manufacturers of such products offered for sale in Ohio will be required to register them as and pay the fee for livestock remedies.

Therefore, in specific answer to your second question, manufacturers of “regulators, conditioners, tonics and animal appetizers” offered for sale in Ohio, whose products are registered for the current calendar year under the Feedstuff Law, will not be required upon the effective date of Am. Sub. H. B. No. 567 to register such products as livestock remedies, by virtue of Section 4, paragraph (e) of said Act which in effect exempts such products from registration during the current calendar year. However, upon the expiration of the present registration, such products must be registered and the fee paid in accordance with the livestock remedy provisions of Am. Sub. H. B. No. 567.

Your third question involves the registration of insecticides and fungicides which fall within the definition of livestock remedies as defined in Am. Sub. H. B. No. 567. You indicate that manufacturers selling such products have been licensed annually under Section 1177-36, General Code, but that the license fee provided for therein has not been collected by reason of a permanent court injunction obtained about 1914. Your question is: Are the persons holding such licenses, which are valid until December 31, 1949, also required to register their products and pay the fee therefor in accordance with the livestock remedy provisions of Am. Sub. H. B. No. 567, for the period October 27 to December 31, 1949?

I believe the reasoning I have followed with respect to your first and second questions clearly indicates the conclusion I must reach in response to this question. Since there is no provision exempting insecticides and fungicides licensed under Section 1177-36, General Code, from the operation of the law, such as was found to exist with respect to products licensed under the Feedstuff Law, and further since the provision

of law pursuant to which such products are currently licensed is repealed by Am. Sub. H. B. No. 567, I can not avoid the conclusion that such products which fall within the definition of livestock remedies are subject to registration as such on the effective date of said Act.

Before concluding perhaps I should call attention to the fact that a person holding a license obtained from the sovereign does not have a vested or permanent right therein; that under accepted principles of law the sovereign may impose new or additional burdens on a licensee or revoke the license during the stated period of such license. The general rule is stated as follows in 33 Am. Jur., pages 342 and 343:

“The constitutional inhibition as to the impairment of the obligation of contracts does not extend to licenses. A license itself is not a contract between the sovereignty and the licensee, and is not property in any constitutional sense. It does not confer a vested, permanent or absolute right, but only a personal privilege to be exercised under existing restrictions and such as may thereafter be reasonably imposed. Free latitude is reserved by the governmental authority to impose new or additional burdens on the licensee or to revoke the license. \* \* \*”

See also: *Sylvania Busses, Inc. v. Toledo*, 118 O. S. 187, 197, where the court makes the following observation:

“\* \* \* Since the license was not a contract between the state and the licensee, its revocation or limitation by the enactment of the amendment of 1925 affected no property rights whatever. 17 Ruling Case Law, 476. This authority states that, inasmuch as a license is not a contract, ‘free latitude is reserved by the Legislature to impose new or additional burdens on the licensee, or to alter the license, or to revoke or annul it. And this is the general rule, notwithstanding the expenditure of money by the licensee in reliance thereon, and regardless of whether the term for which the license was given has expired.’” (Citing many cases.)

In view of the preceding and in specific answer to the questions raised by you, I am of the opinion that:

1. Am. Sub. H. B. No. 567, 98th General Assembly, requires that all livestock remedies offered for sale in Ohio be registered and the full fee therefor be paid by the manufacturer or person responsible for placing such remedy on the market, for the period October 27, 1949, the effective date of said Act, to December 31, 1949.

2. Manufacturers of "regulators, conditioners, tonics and animal appetizers" offered for sale in Ohio, whose products are registered for the current calendar year under the Feedstuff Law, will not be required upon the effective date of Am. Sub. H. B. No. 567, 98th General Assembly, to register such products as livestock remedies, by virtue of Section 4, paragraph (e) of said Act which in effect exempts such products from registration during the current calendar year. However, upon the expiration of the present registration, such products must be registered and the fee paid in accordance with the livestock remedy provisions of Am. Sub. H. B. No. 567, 98th General Assembly.

3. Insecticides and fungicides which fall within the definition of livestock remedies as defined in Am. Sub. H. B. No. 567, 98th General Assembly, and which have been licensed for the current calendar year under Section 1177-36, General Code, will also have to be registered and the full fee therefor paid in accordance with the livestock remedy provisions of said Act, for the period October 27 to December 31, 1949.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.