



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

June 20, 1975

Opinion No. 75-254

Mr. Wesley H. Sowers, Senator
31st District - Sedgwick County
527 Union Center
Wichita, Kansas 67202

Dear Senator Sowers:

You inquire as to the effect of K.A.R. 68-2-17 and K.S.A. 1974 Supp. 65-1650 on the practices of pharmacists in Kansas relating to the advertising of prices of prescription drugs.

In February of 1974, this office issued an opinion as to the efficacy of K.A.R. 68-2-17 in response to your request. It was the opinion of the Attorney General Vern Miller that the State Board of Pharmacy had exceeded its authority when they had promulgated regulations prohibiting the advertising of prescription drug prices. I am in agreement with that opinion. I am enclosing a copy for your reference. Therefore, K.A.R. 68-2-17 is without any force or effect since the Attorney General Vern Miller withdrew his approval of that regulation in Opinion No. 74-45.

Secondly, you ask whether the Kansas Board of Pharmacy has the authority to prohibit advertising of prescription drug prices under K.S.A. 1974 Supp. 65-1650 which states in pertinent part thus:

"The board of pharmacy is hereby authorized to regulate the advertising, but not the prices or discounts, of prescription drugs. The provisions of this section shall not be construed to: (1) Authorize the state board of pharmacy to require, regulate or prohibit the posting within a pharmacy of the current charges by such pharmacy for prescription drugs and services, nor, (2) restrict the offering of discounts on prescription drugs."

[Emphasis added.]

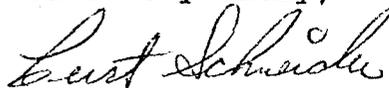
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The Board is clearly authorized to regulate advertising done by pharmacies. However, the power to regulate does not include the power to prohibit, City of Emporia v. Volmer, 12 Kan. 630; Stebbins v. Mayer, 38 Kan. 573; Madden v. The State, 68 Kan. 661. Therefore, the Board may prescribe reasonable regulations to protect the public but may not totally prohibit the advertising of drug prices.

Once again, I would refer you to the earlier opinion of the Attorney General Vern Miller under the date of February 11, 1974, which points out that the fact that a number of state courts have held the prohibition of prescription drug advertising to be an unreasonable exercise of a state's police powers.

Therefore, it is my opinion that K.A.R. 68-2-17 is without force and effect as indicated in Attorney General Vern Miller's Opinion Number 74-45, and that K.S.A. 1974 Supp. 65-1650 does not authorize the Board of Pharmacy to prohibit the advertising of prescription drug prices.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS/PAH/ksn

Enclosure