Mr. Ira V. Rothrock, Secretary
Indiana Board of Pharmacy
327 State House
Indianapolis 4, Indiana

Dear Sir:

Your letter of December 8, 1954, has been received requesting an Official Opinion on the following question:

"Do the words 'Exempt' and 'preparations exempted' as used in Sec. 8, Chapt. 280, Acts of 1935 have the effect of exempting preparations containing any quantity of coca leaves, opium or any derivatives therefrom, from any of the requirements of the Act other than the requirement of a properly written and signed prescription?"

The Acts of 1935, Ch. 280, as amended, is the Uniform Narcotics Drug Act, as found in Burns' Indiana Statutes (1942 Repl.), Section 10-3519 et seq. Section 8 of said Act of which you request a construction, being Burns' Indiana Statutes (1942 Repl., 1953 Supp.), Section 10-3526, provides as follows:

"Except as otherwise in this act specifically provided, this act shall not apply to the following cases:

"(1) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation that contains in one [1] fluid ounce, or if a solid or semi-solid preparation, in one [1]avoirdupois ounce, (a) not more than two [2] grains of opium, (b) not more than one-quarter of a grain of morphine or of any of its salts, (c) not more than one [1] grain of codeine or any of its salts, (d) not more than one-eighth of a grain of heroin or of any of its salts, (e) not more than one-half of a grain of extract of Cannabis; nor more than one-half of a grain of any more potent derivative or preparation of Cannabis; (f) not more than one-quarter of a grain of isonipecaine or any of its salts; (g) and not more than one of the drugs named above in clauses (a), (b), (c), (d), (e), and (f)."
“(2) Prescribing, administering, dispensing, or selling at retail of liniments, ointments, and other preparations, that are susceptible of external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments, or preparations, except that this Act shall apply to all liniments, ointments, and other preparations, that contain coca leaves in any quantity or combination.

“The exemptions authorized by this section shall be subject to the following conditions:

“(a) No person shall prescribe, administer, dispense, or sell under the exemptions of this section, to any one person, or for the use of any one person or animal, any preparation or preparations included within this section, when he knows, or can by reasonable diligence ascertain, that such prescribing, administering, dispensing, or selling is for the purpose of satisfying addiction.

“(b) The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, administered, dispensed, or sold, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone. Such preparation shall be prescribed, administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this act.

“Nothing in this section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, dispensed, or sold, to any person or for the use of any person or animal when it is prescribed, administered, dispensed, or sold, in compliance with the general provisions of this act.”

It is to be observed that the other numerous sections of said Act in detail make provision for, and restrictions on, the methods of the manufacturing, possessing, handling, prescribing, and dispensing of such drugs and pertain to manufacturers,
wholesalers, drug stores, pharmacists, physicians and other specified persons who have anything to do whatever with the possession, sale or use of narcotic drugs.

It is to be noted that Section 8 of said Act, aforesaid, begins with the provision "Except as otherwise in this Act specifically provided, this Act shall not apply to the following cases: * * *." Therefore, that which follows the above language in said section of the statute is considered an exemption from the other provisions of said Act as contained in other sections thereof, except where there is a specific provision in some other section to the contrary. An example of such a specific provision is contained in Section 9, Clauses (4) and (5), as found in Burns' Indiana Statutes (1942 Repl.), Section 10-3527, which provides:

"(4) Every person who purchases for resale, or who sells narcotic drug preparations exempted by section eight (§ 10-3526) of this act, shall keep a record showing the quantities and kinds thereof sold, or disposed of otherwise, in accordance with the provisions of subsection 5 of this section.

"(5) The form of records shall be prescribed by the state board of pharmacy. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced, and the proportion of resin contained in producible Sativa L. from which the resin has not been extracted, received or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were
sold, administered or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two [2] years from the date of the transaction recorded. The keeping of a record required by or under the Federal Narcotic Laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft."

It is to be further noted that the exemption provisions contained in Section 8 of said Act, supra, are further limited by the detailed provisions of Clause (2), and by Subsections (a) and (b) thereof.

Further attention is directed to Section 18 of said Act as found in Burns' Indiana Statutes (1942 Repl.), Section 10-3536, which provides as follows:

"In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this act, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this act, and the burden of proof of any such exception, excuse, proviso, or exemption, shall be upon the defendant."

In answer to your question I am therefore of the opinion that said section of the statute should be construed to exempt a person from the provision of said statute as a whole, when such person affected establishes:

1. That there are no other specific provisions in the statute affecting his claimed exemption;

2. When the prescribing, administering, or selling at retail of any medicinal preparation does not exceed in proportion that amount of narcotic drugs specified in Clause (1) of Section 8 of said Act; or that if the same consists of liniment, ointments, and other preparation, that are susceptible for external use only and that contain narcotic drugs in such combination as to prevent the same from being readily extracted

269
therefrom; however, such liniments, et cetera, in no case shall contain coca leaves;

3. That he did not know and could not by reasonable diligence ascertain that such prescribing, administering, dispensing or selling was for the purpose of satisfying addiction;

4. That such medicinal preparation, or liniment, ointment or other preparation susceptible for external use only, contains some other drug or drugs conferring upon it medical qualities other than those possessed by the narcotic drug alone.

5. That said preparation was prescribed, administered, dispensed and sold in good faith as a medicine, and not for the purposes of evading the provisions of said Act. Of course, the exemption provisions of Section 8 of the statute are not to be construed to limit the kind and quantity of any narcotic drug that may be so prescribed, administered, dispensed or sold to any person or for the use of any person or animal, when it is so prescribed, administered, dispensed or sold in compliance with other provisions of said Act.

OFFICIAL OPINION NO. 73

December 20, 1954

Hon. Frank T. Millis
Commissioner of Revenue
141 South Meridian Street
Indianapolis, Indiana

Dear Mr. Millis:

I have your request for an Official Opinion, in which you ask the following questions relative to the administration of the Gross Income Tax Law:

"1. First, if a sheriff returns a warrant unsatisfied and the Department later receives payment for the warrant, should sheriff's damages be included in the sum collected by the Department of Revenue? If so, how should the amount represented by sheriffs' damages be disposed of and accounted for by the Department?"