

the Retail Installment Sales Act of 1935. Replying, I desire to refer you to the official opinion of my predecessor under date September 28, 1936, addressed to you, in which opinion I concur.

See Opinions of Attorney General, 1936, p. 365.

PHARMACY, BOARD OF: Right of person to take examination for registration under section 1, chapter 93, Acts of 1937. Evidence necessary to establish when apprenticeship began; sufficiency of affidavit.

October 6, 1937.

Mr. Russell B. Rothrock,
Secretary Indiana Board of Pharmacy,
307 State House,
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of your letter of October 5, 1937, requesting an official opinion on the following question:

“We ask that you give us a written opinion as to whether or not we are legally within our rights in accepting an affidavit of experience as an amendment or rather a correction of an application for apprentice registration filed by an applicant in 1924 in which it showed that his experience as an apprentice started in 1934, but which he, the applicant, claims is an error as it should show the time he started to work for a former employer in 1919, who had failed to register the employee as an apprentice.

“Can we legally grant this applicant the right to take our examination on the affidavit showing experience prior to January 1, 1920.”

You refer me to section 1, chapter 93, Acts 1937, which states as follows:

“That any pharmacist apprentice whose apprenticeship began prior to the first day of January, 1920, and whose certificate as a pharmacist apprentice was issued prior to July 1, 1924, shall be eligible to take the examination to become a registered pharmacist, at any time prior to the first day of January, 1930, if such

person possesses the qualifications which were required to take the examination to become a registered pharmacist prior to the first day of January, 1920."

You do not state the day and month in 1924 when this certificate as a pharmacist apprentice was issued but I am assuming it was issued before July 1, 1924.

Two questions then present themselves to your board.

1. Did this person's apprenticeship begin prior to the first day of January, 1920, and can we legally grant this applicant the right to take our examination on the affidavit showing experience prior to January 1, 1920?

2. Does this person possess the qualifications which were required to take the examination to become a registered pharmacist prior to the first day of January, 1920?

Taking up the last question first: section 2, chapter 113, Acts of 1913, sets forth the qualifications which were necessary prior to January 1, 1920, to become a registered pharmacist:

" . . . To be a registered pharmacist, he shall pass a satisfactory examination before said board and shall produce and file such evidence as is satisfactory to said board of having served four years in a store of pharmacy where physicians' prescriptions are compounded. . . . "

This section is self-explanatory.

The first question, "Did this person's apprenticeship begin prior to the first day of January, 1920, and can we legally grant this applicant the right to take our examination on the affidavit showing experience prior to January 1, 1920, resolves itself into, what evidence is necessary for the applicant to present to the board to establish the fact that his apprenticeship began prior to January 1, 1920? Is an affidavit sufficient?

"Evidence is defined as the means from which an inference may logically be drawn as to the existence of a fact; that which makes evident or plain."

22 C. J. 65 (1), 18 Ind. 329, 332.

Webster's new international dictionary defines evidence as:

"That which makes evident or manifest; that which furnishes or tends to furnish, proof.

"That which is legally submitted to a competent tribunal as a means of ascertaining the truth of any alleged matter of fact under investigation before it."

It is my opinion, therefore, that the board should require evidence which is sufficient in the minds of the board to prove the fact that this person's apprenticeship began prior to January 1, 1920.

Turning now to the question, "Is an affidavit sufficient?"

"Affidavits when admissible as a general rule are only prima facie evidence, and it has been said that they should not be used where better evidence is obtainable."

2 C. J. 376 (Sec. 149).

It is, therefore, my further opinion that an affidavit would be only one link in the chain of evidence which you should require of the person attempting to establish the fact.

INSURANCE DEPARTMENT: Insurance company, capital deposit. Evidence of real estate as capital deposit. Hoosier National Life Insurance Co.

October 6, 1937.

Hon. George H. Newbauer,
Insurance Commissioner,
State House,
Indianapolis, Indiana.

Dear Sir:

In your letter of recent date you ask for an official opinion as to whether or not a stock insurance company organized under the Acts of 1899, as amended in 1907 and 1929, can, as a portion of their capital stock deposit pursuant to statute, the same being section 39-205, Burns 1933, deposit the deed to real estate?

It is a well settled rule of law in Indiana that a statute should be so construed that every part of it, if possible, may be operative.

State, ex rel., Hopper v. Board of Election Commissioners of Tipton, 196 Ind. 472.

In the case of Lime City Building, Loan and Savings Association v. Black, 136 Ind. 544, it was laid down as a rule of construction that in construing a statute, it is not to be presumed that any part of the statute was intended to be without meaning, and every part of the statute must be viewed in connection with the whole, so as to make all parts harmonize, if practicable, and give a sensible and intelligent effect to each.