

7/14/49

MARYLAND - TOXIC FINISHES

Effective June 1, the State of Maryland made it unlawful to sell toys and playthings, including children's furniture, finished with any material containing "lead or other substance of a poisonous nature from contact with which children may be injuriously affected," unless such articles are so labeled as to show that the finish contains lead or other poisonous substance.

It is a criminal statute, and no administrative agency is authorized to issue regulations or establish the percentages of various toxic materials that may safely be used in finishes that will not require the use of warning labels.

The State Department of Health has undertaken the enforcement of this law - enforcement in the sense of policing, without interpretation. It has disclaimed authority to issue regulations, and has pointed out that in Maryland, in criminal cases, juries are judges of both the law and the facts, and that no jury would be bound by any action or opinion of the Department.

Toy and furniture dealers in Maryland have demanded guarantees of non-injurious finishes from manufacturers, who in turn have demanded assurances from members of this industry. Some of our members have sought similar assurances from raw material manufacturers. So far as we know, none have been given.

The problem is difficult. Some interpret this law as requiring a label if a finish contains any lead, for example, regardless of percentage. We have interpreted it more narrowly - as requiring labels only when finishes contain lead or other poisonous substance from contact with which children may be injuriously affected. This interpretation is supported by an unofficial opinion by the Attorney General of Maryland to the State Department of Health. We bear in mind, however, that in Maryland the juries are judges of both law and fact.

This was an extremely difficult law to oppose. It had patent faults, and they were pointed out, but the purpose, to protect children, was laudable, and could not be opposed. The background was unfortunate. The Health Department had a record of thirty-one cases of lead poisoning of children in 1948, four of whom died. Ten cases have been reported this year. The Baltimore City Health Department records show a total of 213 cases of lead poisoning in children under ten years of age since 1931, including 76 deaths. Its bulletin appeared while the bill was before the Legislature. We are skeptical of the diagnoses but unable to dispute them.

It would have been imprudent to point out that the exposure from toys and children's furniture is negligible and that children can contact other finishes about the house. That would have invited broader legislation restricting the use of lead. The Baltimore Health Department in the May issue of "Health News" has already warned parents:

"Use only paint which does not contain lead for repainting indoor surfaces, furniture or toys."

"Do not buy paint for indoor use unless it is free from lead."

"Remove old paint from window sills before repainting with lead-free paint."

The stage was well set for broader legislation. The possibility that other states would follow Maryland's example or introduce even broader legislation must be recognized.

We do not know enough about the toxicity of the various materials used by our industry. Heretofore, there has been no occasion for such an investigation. We should know more.

If such legislation appears elsewhere, it would seem preferable to have a law enforced by an administrative agency with which the industry could deal. As such agency would probably know little or nothing of the toxicity of our materials, it would be well for this industry to know as much as possible and be prepared to give practical guidance. The Scientific Section has been exploring all sources of such information and the Toxic Materials Committee will doubtless take the problem under consideration.

-- K. Q. MACDONALD