

Ice Cream

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Manufacturer of ice cream operating chain of stores and selling ice cream at retail through said stores with no element of resale is a retail manufacturer and subject only to the \$5.00 license tax under section 13071, Laws 1933, page 254.



September 12, 1934.

Hon. J. C. Breshears,
Commissioner of Agriculture,
Jefferson City, Missouri.

Dear Sir:-

We have your letter of July 11, 1934, in which an opinion was requested as follows:

"With reference to Article 5, Chapter 93, sections 13,068 to 13,076 inclusive, Ice Cream, as amended 1933, from the standpoint of revenue collection, we urgently need your advice upon the following question:

"Can a wholesale license be required of a manufacturer of ice cream who operates a chain or group of retail stores located in different sections of a city and sells the product at his places of business?

"For example, the Walgreen Company operates not less than 27 stores in St. Louis, yet seeks to get by with paying \$5.00 for a retail license, which retail license of \$5.00 we hold was intended for one store only, but which Walgreen insists should license all their 27 stores. This seems unfair and inequitable to the individual store making its ice cream for its own use, yet paying \$5.00.

"This is not the only instance, yet this is the outstanding case."

Section 13071, Revised Statutes of Missouri, 1929, as reenacted in Laws 1933, page 254, provides a license tax in cities of over five thousand inhabitants of one hundred dollars for manufacturers of ice cream for sale at wholesale, and five dollars for manufacturers of ice cream for sale at retail. The terms "wholesale manufacture" and "retail manufacture" are defined in the above mentioned section as follows:

"For the purpose of this article, the term 'wholesale manufacture' shall include every manufacturer of ice cream who sells at wholesale for resale, and the term 'retail manufacture' shall include every manufacturer who manufactures and sells ice cream at retail."

Hon. J. C. Breshears

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September 12, 1934.

The above definition is identical with the definition contained in the 1929 section.

We can readily see the point of view as expressed in your letter, but in view of the above definitive section we have no choice but to hold that the mere fact that a manufacturer of ice cream operates a number of stores through which he sells his ice cream at retail does not make him a wholesale manufacturer. As long as he sells the ice cream direct to the public through his stores, and there is no element of resale, he qualifies as a retail manufacturer and can operate on the five dollar license fee.

In our opinion, the only way to correct the evil alluded to in your letter is through legislative enactment further qualifying "retail manufacture".

Very truly yours,

CMEJr:LG

CHAS. M. HOWELL, Jr.
Assistant Attorney General

Approved:

Attorney General.