

AGRICULTURE:
EGGS:



Drivers of trucks making deliveries for a business duly licensed as a "retailer" under provisions of Chapter 196, Sec. 310 et seq., which drivers also solicit orders and sell eggs en route, are not required to obtain a retailer's license.

June 21, 1956

Honorable L. C. Carpenter
Commissioner of Agriculture
State of Missouri
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office, which request reads as follows:

"A problem has arisen in this Department with reference to a question involving the new Missouri Egg Law at Chapter 196 of the Revised Statutes of Missouri, 1949.

"We have a situation where a particular dairy which we shall refer to as the Country Club Dairy Company, 5633 Troost Avenue, Kansas City 10, Missouri is licensed as a retailer under the Egg Law. The Country Club Dairy Company engages in the sale of dairy products and of eggs at retail. The Country Club Dairy Company will have dairy products and eggs available for sale at retail at the plant. However, the majority of the Country Club Dairy Company sales are made on truck routes. The truck routes are manned by drivers who are paid a salary but as a whole are paid for the sale of eggs on a commission basis, based upon the number of dozen of eggs sold by the driver. In some cases the orders for eggs are called into the plant or marked on an order card in the consumer's possession which is marked before delivery. In many cases the majority of egg sales made by drivers are made as a result of direct solicitation by the driver, while in other cases the minority of the sales made are made by solicitation.

"Some question has arisen as to whether or not these trucks become a separate place of business as defined

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in Section 196.335 and, therefore, each driver should have a separate retailer's license under the Law."

Section 196.313 RSMo Cum. Supp. 1955, provides in part as follows:

"No person shall buy, sell, trade or traffic in eggs in this state without a license with the following exceptions:".

Section 196.316 RSMo Cum. Supp., 1955, provides in part as follows:

"All persons engaged in buying, selling, trading or trafficking in, or processing eggs, except those listed in section 196.313, shall be required to be licensed under sections 196.311 to 196.361. Such persons shall file an annual application for such license on forms to be prescribed by the commissioner, and shall obtain an annual license for each separate place of business from the commissioner. The following types of licenses shall be issued:".

The words "buy", "trade", and "traffic" are not definite in the act. However the word "sell" is defined as follows: Section 196.311, paragraph (3) reads:

"(3) 'Sell' means offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade;".

The words "traffic" and "trade" have often been held to be synonymous with buying and selling. *May v. Sloan*, 101 U.S. 231; *State v. Deckebach*, 113 Ohio State, 347; *State v. Miller*, 318 Mo. 581; *Fine v. Moran*, 74 Fla. 417; *The Robin Goodfellow*, 20 Fed.(2) 924, and a general reading of the whole act leads us to the conclusion that such terms were employed with the above-cited definition of the term "sell" in mind.

Under the facts that you have outlined, the drivers of the trucks are merely agents or employees of the dairy company and, while they do in a broad sense offer (in certain instances) eggs for sale, accept eggs for sale, or have in their actual possession eggs for sale, they are in each instance acting on behalf of their principal, and not on their own behalf.

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CONCLUSION

Therefore, it is the opinion of this office that drivers of trucks making deliveries for a business duly licensed as a "retailer" under provisions of Chapter 196, Section 310 et seq., which drivers also solicit orders and sell eggs en route, are not required to obtain a retailer's license.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

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