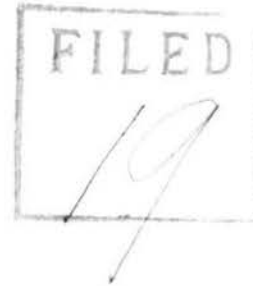


LABOR AND INSPECTION DEPARTMENT:-Persons engaged in using sterilizing or exterminating processes on mattresses would not come under Section 13308, R. S. Mo. 1929, unless, as a matter of fact, they were rebuilding or renovating mattresses.

4-23
April 21, 1934.



Mrs. Mary Edna Cruzen,
Labor Commissioner,
Jefferson City, Missouri.

Dear Mrs. Cruzen:

We are acknowledging receipt of your letter in which you inquire as follows:

"My attention has been called to Section 13308, R. S. Mo. 1933, where it is stated:

No person shall make, remake or renovate bedding, except a person making, remaking or renovating bedding for his own use, until he has secured a permit."

A dispute has arisen over the word 'renovate.' Some mattress firms who are using a sterilizing process claim they do not have to secure a mattress permit, because the word 'sterilizing' does not mean the same as 'renovating.' They also claim that the word 'exterminating' is different than the words 'renovating' and 'sterilizing.'

I will appreciate it very much if you will issue an opinion on this particular phase of the mattress law, as there is quite a controversy over this matter in St. Louis and a number of these firms are threatening to go to court about the provisions of this section if we insist on collecting a permit when they claim they are 'sterilizing' and 'exterminating', but not 'renovating' mattresses.

I will appreciate it very much if you will give me your opinion on the above matter as soon as possible."

Section 13308, R. S. Mo. 1929, provides as follows:

"No person shall make, remake or renovate bedding, except a person making, remaking or renovating bedding for his own use, until he has secured a permit from the state commissioner of labor and industrial in-

spection and has paid to the state commissioner of labor and industrial inspection an inspection and permit fee of twenty dollars, which such payment or charge shall constitute a factory inspection charge for the purpose of enforcing this article. The permit so issued by the state commissioner of labor and industrial inspection shall remain in force and effect until the end of the calendar year in which it was issued or until voided by the state commissioner of labor and industrial inspection for failure to maintain the required sanitary conditions in and around a factory in which bedding is made, remade or renovated or for failure to sterilize and disinfect properly all previously used materials used in making, remaking or renovating bedding."

You inquire whether under the above Section a person engaged in the business of using a sterilizing or exterminating process can be made to pay a permit fee.

The above Section does not mention the term "sterilizing or exterminating," but expressly covers persons who "make, remake or renovate bedding." The solution to your question then must depend on whether a person engaged in using a sterilizing or exterminating process is, as a matter of fact, renovating bedding.

The word renovate is defined in the dictionary as meaning, "to renew, to make new again, to restore, to a state of freshness or vigor; to repair."

The word sterilize is defined as meaning, "to make sterile, barren or unproductive, to impoverish, to exhaust of fertility, to deprive of fecundity, or the power of producing young." The word exterminate is defined as meaning "to extirpate, to destroy utterly; to root out, to put an end to."

We do not believe that either as defined technically or as generally understood that the word renovate is synonymous with the word exterminate or the word sterilize. To renovate mattresses, as we understand it, means to rebuild them by adding new materials or changing the structure of the mattress in such a way as to make it appear as new. The exterminating or sterilizing process, as used by these people, does not necessarily contemplate the rebuilding of the mattress, but rather gives the impression that they are destroying and killing germs of various kinds which infest mattresses. If they, as a matter of fact, to rebuild mattresses by adding new materials, then we believe they would be engaged in the business of renovating mattresses, even though they might see fit to call their process a different name. If, however,

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the process that they are using is not of rebuilding or restoring the mattresses to their former condition structurally, but is rather one of eradicating or destroying germs, etc., that infest mattresses, then we would be of the opinion that they would not, as a matter of fact, be renovating mattresses. As we interpret the statute it is a question of fact as to what is actually done and not the technical name by which the business is designated, and we believe that an investigation of the facts will make it possible for you to decide whether or not they can be classed as renovators of mattresses even though they use a so-called different name.

It is therefore the opinion of this Department that whether or not the persons who are using the exterminating and sterilizing process can be required to take out a permit under Section 13308 depends, as a matter of fact, upon what is actually done to the mattresses. If the process they use is simply to eradicate and destroy germs which infest mattresses, then we would say they are not renovators. However, if they do rebuild or add new materials so as to restore the mattresses to their former condition, then we believe they might come under this Section. Since you do not state in your letter that they are in fact rebuilding or renovating mattresses, we would be of the opinion that the process they are using would not bring them within the terms of this Section of the Statutes.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

Attorney General.

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