

GAME AND FISH: A club is not a commercial establishment within the meaning of Section 8285 Laws of Missouri, 1931.

---

September 14, 1939 9/18



Hon. I. T. Bode, Director  
Conservation Commission  
Jefferson City, Missouri

Dear Sir:

We are in receipt of your request for an opinion under date of September 11th, 1939, which reads as follows:

"In certain instances, the enforcement of 'Section 8285-Regulating sale, storage and serving game -- exception -- penalty' hinges upon an interpretation of the term 'commercial establishment'. The Prosecuting Attorney of St. Louis City has declined to file against a party until advised by your office that the accused operates a 'commercial establishment' within the intent of Section 8285 (1931 Laws pp 225-226).

"A group of individuals operates and maintains a club house where meals, lodgings and other facilities are furnished, at a price to members and their guests. Many of the members do not reside at the club house and visit there only occasionally. Each member is not only obligated to pay a stated membership fee, but he is also expected to pay for personal services received. In addition, he may be subjected to assessments to liquidate any operating deficit. It may therefore be assumed that the membership expects the organization to be self-sustaining and with a minimum of assessments.

"Section 8285, as you know, forbids storing or serving game 'in any commission house, cold storage house or commercial establishment, in this state' etc. Could it be successfully contended that the club is a commercial establishment in its relation to visiting members, while for resident members, it is a home and not a commercial establishment? If such a reasoning is well founded, then can the club be prosecuted for the storage of game in violation of Section 8285, without showing that such game was owned by a non-resident member?"

Section 8285, Laws of Missouri, 1931, reads as follows:

"Any person, firm or corporation, who shall, at any time of the year barter, sell or offer for sale, or who shall store or serve in any commission house, cold storage house or commercial establishment, in this state, either under the name used in this article, or under any other name or guise whatever, any animal or bird protected in this article, unless the same be fur-bearing animals, lawfully taken shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), and an additional fine of five dollars (\$5.00) for every bird or animal or part of every bird or animal bartered, sold or offered for sale, stored or served: Provided, that nothing in this section shall be construed to apply to the pelts or parts of fur-bearing animals lawfully taken, or as otherwise provided for taxidermists, or scientific specimens in this article: Provided, nothing in this section shall be construed to prohibit the storing, and serving, in any eating establishment, of deer and elk, raised in captivity, as provided for in section 8310."

In State ex rel. Kansas City Power & Light Co.,  
v. Smith, State Auditor, 111 S. W. 2d 513, 1. c. 515,  
the court said:

"The ordinarily accepted use of the phrase  
'commercial establishment' denotes a place  
where commodities are exchanged, bought,  
or sold, \* \* \* "

In the ordinary case of a restaurant, for example, where  
the dominant purpose of the conduct of the establishment  
is the buying and selling to patrons, there would seem  
to be no difficulty in applying the above, and we could  
say that the business is a "commercial establishment"  
within the meaning of the court's words. But in the  
case of a club conducted as the one set out in your  
request, the prime purpose of the organization is not  
the buying and selling of commodities, but is the  
pleasure and convenience of its members. The sale of  
meals to members is at most merely ancillary to the  
main purpose of the club.

In 12 C. J. S. 804, it is said:

"Used adjectivally, business has been held  
synonomously with commercial."

The word "business" is defined by Webster as "that which  
occupies the time, attention or labor of men for the  
purpose of profit or improvement."

As we understand your statement of facts, the club  
you mention is in no sense run for profit, but is con-  
ducted on a strictly non-profit basis. As you point  
out in your request, it may be assumed that the member-  
ship expects the club to be self-sustaining. Regardless  
of whether the members make the club house their home,  
or visit it only occasionally, the very important element  
of expectation of profit to be derived from the conduct  
of the club is lacking.

Hon. I. T. Bode

(4)

Sept. 14, 1939

The court in *Female Orphan Society v. Board of Assessors, et al.* 33 So. 592, said:

"The property in question is no part of the asylum proper but is commercial property; that is property leased out for revenue."

The above seems to further carry out the idea that the words "commercial establishment" in Section 8285 Laws of Missouri, 1931, would refer to a profit seeking undertaking.

CONCLUSION

It is therefore the opinion of this department that the club you describe in your request is not a commercial establishment within the meaning of Section 8285, Laws of Missouri, 1931, either in its relation to visiting or resident members.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney-General

APPROVED:

J. E. TAYLOR  
(Acting) Attorney-General

WJB:RW

RPCW:RW