

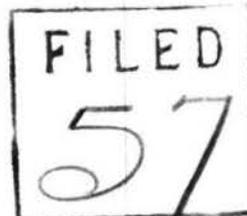
AGRICULTURE, DEPT. OF:
EGG INSPECTION:

Owner of "egg-breaking establishment"
not required to take out "egg-traffick-
ing license."

August 22, 1939

8-25

Honorable Jewel Mayes, Commissioner
Department of Agriculture
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your request for
an official opinion which reads as follows:

"This is to thank you in advance
for a ruling on Article 4, Chap-
ter 93, Revised Statutes, 1929.
This Article 4 was transferred to
the State Department of Agricul-
ture by an act of 1933, and certain
sections were directly amended by
House bill 346 of the 1939 Legis-
lature solely to definitely change
the administrative authority to
the 'State Department of Agricul-
ture' and 'Commissioner of Agricul-
ture.'

"Enclosed is an office-memorandum
submitted by Chief Inspector John
E. Clary, suggesting the need for
this ruling. We are presuming that
the 'egg-breaking license' does not
grant the right to 'traffic in eggs',
since the licenses were provided by
two entirely separate acts of the
Legislature of 1919.

"In Section 13059 (enacted in 1919,
page 365) there is the provision for
a \$2.00 traffic license for all
traffickers of eggs in less than car-
lots, and also a \$10.00 license for

all traffickers of eggs in carlots.

"Under a separately enacted act of 1919 (page 357), Section 13065, etc. provides for a license for 'egg-breaking establishments'.

"A ruling is needed to settle a question that has been brought up, as to whether an 'egg-breaking establishment' must also have the \$2.00 or \$10.00 'egg traffic license' in addition to the \$50.00 'egg-breaking establishment license'. The \$50.00 'egg-breaking license' was provided by a separate act of the same 1919 Legislature."

Section 13059, R. S. Missouri, 1929, provides as follows:

"That for the purpose of enforcing the provisions of this article it is hereby required that ten days after this article takes effect, any person, firm or corporation that shall engage in the business of buying, selling, dealing in or trading in eggs, including those retailers who buy direct from the producer and who sell in lots of one case or more, shall procure a license from the state food and drug commissioner to conduct such business. Such officer upon receipt of proper application upon forms such as he may prescribe, accompanied by an annual license fee of two dollars (\$2.00) for a person, firm or corporation that shall engage in the business of buying, selling, dealing in or trading in eggs in lots of less than one carload shall thereupon issue to such person, firm or corporation an annual license to engage in such business; and such person upon receipt of a proper application upon forms such as he may prescribe accompanied by a license fee of ten dollars

(\$10.00) for a person, firm or corporation that shall engage in the business of buying, selling, dealing in or trading in eggs in lots of one carload or more, shall thereupon issue to such person, firm or corporation an annual license to engage in such business."

Section 13065, R. S. Missouri, 1929, provides as follows:

"All persons, firms or corporations who engage in the business of removing eggs from their shells in the manufacture of frozen, liquid, desiccated or any form or whole eggs, yolks, whites, or any mixture of yolks and whites, for food or manufacturing purposes, whether without the addition of any other ingredients, shall, before engaging in such business, apply to the state food and drug commissioner for the inspection to be made of his establishment. Thereupon, the state food and drug commissioner, or duly authorized inspectors, shall inspect the establishment and equipment of said egg-breaking establishment, and they shall also ascertain if said establishment complies in method and equipment with the sanitary laws of this state and the rules and regulations that from time to time shall be made and established by the state food and drug commissioner for the regulation of these establishments. If, after such inspection, it shall appear that the said establishment complies with the provisions of the sanitary law and the rules and regulations governing egg-breaking establishments, then, upon payment to the state food and drug commissioner of an inspection

fee of fifty dollars, he shall issue a permit to the person, firm or corporation to conduct such establishment. All inspection fees under this article shall be paid into the state treasury. Such permits shall begin on January 1st and expire on December 31st of each year and the inspection fee shall be prorated for the first year for every person, firm or corporation engaging in the business for the remainder of the year; and any person or persons engaging in business between January 1st and April 1st shall pay an annual inspection fee of fifty dollars; after April 1st and before July 1st, an inspection fee of thirty-seven dollars and fifty cents; after July 1st and before October 1st, an inspection fee of twenty-five dollars; after October 1st, an inspection fee of twelve dollars and fifty cents. Every permit shall be posted in a conspicuous place in the office or establishment of any person or persons holding such permit."

The question presented by your request is whether a person, firm or corporation who has a permit to conduct "an egg-breaking establishment" is also required to obtain an "egg-trafficking license".

In the construction of the statutes it is a cardinal rule that the intent and purpose of the Legislature as expressed in the statute must be ascertained and given effect. *State v. Toombs*, 25 S. W. (2d) 101; *Thompson v. Lamar*, 17 S. W. (2d) 916, 322 Mo. 514.

Sections 13059 and 13065 were both passed in 1919 by the Fiftieth General Assembly. However, each statute was contained in a separate act. Section 13059 is found in the Laws of Missouri, 1919, page 364, while Section

13065 is in the Act on page 356 of the Laws of Missouri, 1919. An inspection of these two acts will disclose that they are entirely separate and distinct from each other and were intended to apply to two different types of business. Each act provides for a license or permit and for a penalty for failure to comply therewith.

It is apparent that Section 13059, supra, requires a license only of those who are engaged in the business of dealing or trading in eggs, that is, not only buying eggs but also selling them. This construction is based not only upon the title to the act which states that the statute is "to provide for a license of dealers in eggs" but also upon the fact that it is difficult to see how a person could be engaged in the business of only buying eggs.

However, even if Section 13059, supra, is construed so as to require a license of a person engaged in the business of buying eggs, still the owner of an "egg-breaking establishment" would not be required to obtain such a license. The reason for this is that the owner of an "egg-breaking establishment" is not engaged in the business of buying eggs but his business is the "removing eggs from their shells in the manufacture of frozen, liquid, desiccated or any form or whole eggs, yolks, whites, or any mixture of yolks and whites, * * *" The buying of eggs by the owner of the "egg-breaking establishment" is ancillary to but not the business of such owner.

However, if the owner of the "egg-breaking establishment" engages in the business of buying and selling eggs in the shell along with his "egg-breaking establishment", then he is required to take out a license under Section 13059, supra.

CONCLUSION.

It is, therefore, the opinion of this department that a person who purchases eggs and removes them from

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their shells and changes them into another form is required only to purchase an "egg-breaking license" under Section 13059, R. S. Missouri, 1929, and he is not a person who is engaged in the business of buying eggs so as to require him to obtain a license under Section 13059, R. S. Missouri, 1929.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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