

AGRICULTURE: AAA not required to register
for sale of fertilizer.

February 16, 1940

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Mr. M. F. Miller, Director
Missouri Agricultural Experiment Station
Columbia, Missouri

Dear Sir:

You request an opinion on the following statement of facts:

The United States Department of Agriculture, through the Agricultural Adjustment Administration, of Washington, D. C., is offering farmers of the State of Missouri fertilizer for the purpose of soil building in this State. They are selling the fertilizer at Thirty-eight (\$38.00) Dollars per ton, which includes the cost of freight. According to their pamphlet No. NCR-420, issued November 17, 1939, there is no question but what they are selling the fertilizer direct to the farmers and receive the pay for the fertilizer by deducting the amount from the Government allowance for the non-planting of certain crops.

Your inquiry reads as follows:

"1. Is this fertilizer subject to registration and license fee?

"2. Factors which might affect:

a. Does this transaction constitute a sale?

b. Does Federal Government have authority to ship into Missouri under Interstate Commerce Law, thus possibly superseding Missouri law?

c. Do federal regulation supersede State law?

"3. What should be done with two cars on way?"

Section 12589 R. S. Missouri, 1929, reads as follows:

"Before any commercial fertilizer or material to be used as a fertilizer, the selling price of which exceeds five dollars per ton, is sold, offered or exposed for sale in this state, the manufacturer, importer, corporation, company or person who sells or causes the same to be sold, offered or exposed for sale, shall file annually for registry with the Missouri agricultural experiment station at Columbia, a statement which shall certify as follows: (1) The name, brand, or trademark under which the fertilizer is sold; (2) the name and address of the manufacturer of the fertilizer; (3) the guaranteed chemical composition of the fertilizer, expressed in the following terms: (a) Per centum of nitrogen, (b) per centum of available phosphoric acid, and in the case of an undissolved bone, the per centum of

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insoluble phosphoric acid; (c)
per centum of potash soluble in
distilled water."

It will be noticed under the above section that before any commercial fertilizer be sold, the manufacturer, importer, corporation, company or person shall register the same in the Missouri Agricultural Experiment Station at Columbia. This section is not applicable to the Government which is selling the product direct to the farmer. The Agricultural Adjustment Administration law was enacted by Congress and in case of a conflict of the United States Laws and the State Law the United States Law prevails. It was so held in the case of Harrison v. St. Louis-San Francisco Railway Company, 232 U. S. 318, 34 Sup. Ct. 333. In that case the Supreme Court of the United States held that a state cannot pass a law that would directly or indirectly, in any form deprive the United States of a right conferred on any instrument of the Government by the Constitution and the Laws of the United States.

A very similar case which involved the question of gasoline tax was decided recently in the Supreme Court of the United States, in the case of Panhandle Oil Company v. Mississippi, 277 U. S. 218, 72 L. Ed. 857. In that case in denying the right of the state to collect the tax from the Panhandle Oil Company on gasoline sold to the United States Fleet and hospital the court said:

"The United States is empowered by the Constitution to maintain and operate the fleet and hospital. Art. 1, Sec. 8. That authorization and laws enacted pursuant thereto are supreme (art. 6); and, in case of con-

flict, they control state enactments. The states may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised or tax the means used for the performance of Federal functions. The right of the United States to make such purchases is derived from the Constitution. The petitioner's right to make sales to the United States was not given by the state and does not depend on state laws; it results from the authority of the national government under the Constitution to choose its own means and sources of supply. While Mississippi may impose charges upon petitioner for the privilege of carrying on trade that is subject to the power of the state, it may not lay any tax upon transactions by which the United States secures the things desired for its governmental purposes."

CONCLUSION.

In view of the above authorities, it is the opinion of this department that the Agricultural Adjustment Administration need not register or pay a license fee upon the fertilizer sold by the United States to the farmers.

It is further the opinion of this department that since the Agricultural Adjustment Administration has been legally enacted by Congress that it

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need not follow the Missouri Law in reference
to the sale of fertilizer as set out in sections
12588 to 12596, inclusive.

Respectfully submitted,

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APPROVED:

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WJB:RW