

CONSERVATION COMMISSION:  
STATUTORY CONSTRUCTION:

Construction of regulation #37 - (k)  
pertaining to resident State Wholesale  
Dealer's Permit.

January 15, 1942

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Honorable Robert W. Hawkins  
Prosecuting Attorney  
Pemiscot County  
Caruthersville, Missouri



Dear Sir:

This will acknowledge receipt of your request  
for an official opinion which reads as follows:

"I would like to know if under Sec.  
(k) Page 12, wildlife and forestry  
code of Missouri for the year 1941,  
if one who operates a fish market  
and sells fish to a restaurant is  
compelled to purchase a Resident  
State Wholesale Fish Dealer's Per-  
mit of \$25.00.

"The person in question has a whole-  
sale and retail market, however, he  
does not ship any fish."

The regulation you referred to is now known as  
Section 37, subdivision (k), page 29 of the Wildlife and  
Forestry Code for 1942, which reads as follows:

"To possess, buy, sell, transport  
and ship fish and frogs for whole-  
sale purposes, as provided herein,  
upon the payment of a resident  
wholesale fish dealer's permit fee  
of twenty-five dollars (\$25.00)."

The courts have defined wholesale dealer and wholesaler. The court, quoting approvingly from Veazey Drug Co. v. Bruza, 37 Pac. (2d) 294, 1. c. 296, said:

"A wholesale dealer is one whose business is the selling of goods in gross to retail dealers, and not by the small quantity or parcel to consumers thereof. State v. Lowenhaught, 79 Tenn. (11 Lea) 13; Webb v. State, 79 Tenn. (11 Lea) 662."

The court in Great Atlantic & Pacific Tea Co., v. Cream of Wheat Co., 227 Federal 46, defined wholesaler in these words:

"A 'wholesaler' is one who buys in comparatively large quantities, and who sells, usually in smaller quantities, but never to the ultimate consumer of an individual unit. He sells either to a 'jobber,' a sort of middleman, or to a 'retailer,' who sells to the consumer. The quantities bought by the wholesaler may vary from a fraction of a car load to many car loads; it being the character, not of his buying, but of his selling, that marks him as a wholesaler."

A wholesale dealer has often been defined as one whose business is to sell goods in gross as contra-distinguished from one who sells in small quantities. It is common knowledge among business men that restaurants and eating establishments purchase practically all supplies at wholesale prices, that very few commodities are they required to purchase at consumer's cost. The usual procedure is that the restaurant owner purchases supplies at the same cost as a retailer.

The permit in question is that of a State Wholesale Fish Dealer. The fact that he does not ship fish does not lessen his

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obligation requiring him to purchase such permit. One of the primary rules of construction of statutes or ordinances is to ascertain and give effect to the lawmakers' intent which should be done from words used, if possible, considering the language honestly and faithfully to ascertain its plain and rational meaning and to promote its object and manifest purpose. (City of St. Louis v. Pope, 126 S. W. (2d) 1201.) You state that this party operates both wholesale and retail business.

Therefore, it is the opinion of this Department, in view of the foregoing, that such party is required to purchase a resident State Wholesale Dealer's Permit.

Respectfully submitted

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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