DEPARTMENT OF AGRICULTURE: COMMUNITY SALES: Section 2, Paragraph D., Laws of Missouri, 1943, Page 311 construed.

March 29, 1944

Honorable J. W. George
State Veterinarian
Department of Agriculture, State of Missouri
Jefferson City, Missouri

Dear Sir:

We are in receipt of your request of this department for an opinion, dated February 17, which request reads as follows:

> "I have been confronted with the question of whether or not a person, firm or corporation buying livestock on his, or their, own account and move it to his, or their, feed lot or barn and later sells the livestock privately, is conducting 'community sale' as defined in Subsection D, of Section 2, of the Community Sales Law, found on Page 311, of Laws of Missouri, 1943.
>
> "I will appreciate your opinion on this question."

Section 2 of the Community Sales Law, found on Page 311, Laws of Missouri, 1943, referred to by you in your opinion request, reads as follows:

> "The following terms as used in this act shall, unless the context otherwise indicates, have the following respective meanings:

> "(a) The term 'State Veterinarian' shall mean the State Veterinarian of the Missouri State Department of Agriculture.
>
> "(b) The term 'person' includes individuals, partnerships, corporations and associations.
>
> "(c) The term 'livestock' shall mean and include cattle, swine, sheep, goats, and poultry.
>
> "(d) The term 'community sales' means any series of sales, exchanges, or purchases of any livestock made at regular or irregular intervals at an established place in this State, by any person, directly or indirectly, for or on account of the producer or producers, consignor or consignors thereof, at public auction or at private sale, except that this term shall not apply to extablished markets operating under Federal or State regulations, or to any public or private farm or purebred livestock sale."

In addition to the above, we also copy section No. 3, which reads as follows:

> "No person as defined in this act shall engage in the business of operating a community sale unless duly licensed, as hereinafter provided."

Turning our attention to subsection D. of Section 2, supra., we shall first dwell upon the term "community sales". We think it advisable that we give the common definition and meaning of the word "community", as well as the word "sales". The word "community" is defined in 12 Corpus Juris at page 214 as follows:

> "The term properly speaking refers rather to the people who reside in a given locality in more or less proximity, * * * * *"

The word "sale" is defined in Words and Phrases, Volume 38, Page 58 in substance as follows:

> "a sale is a contract whereby one acquires a property in the thing sold, and another parts with it for a valuable consideration."

This definition was taken from the case of Popp Vs. Munger, 268 P. 1100, 131 Okl. 282.

We also think it advisable to define the word "series". In 57 Corpus Juris, Page 270, we find this definition:

> "A continued succession of similar things bearing a similar relation to one another; an extended order, line, or course; sequence; succession".

We appreciate, however, the fact that the Legislature has defined the term "community sales" in Paragraph D, and when we read the definition given in paragraph D, and consider it in the light of the common accepted definition of the word "community", as well as the word, "sales", and the word "series", if nothing else appeared in the law to further emphasize the intent of the Legislature, we would understand that the Legislature was intending that the community of the people who reside in the locality of the place where the sale, exchange or purchase are to take place at regular or irregular intervals, were to participate at such sales. However, it shall not be necessary that we confine ourselves to the proceedure of ferreting out the particular meaning of each word contained in paragraph D., to arrive at the correct answer to your question propounded in your opinion request. We think that the true meaning and intent of the act is unambiguous and fully stated in the wording contained in other sections, namely 3 and 4, and when we read section 3, and a portion of the wording of section 4, in connection with paragraph D, it is our view that only one conclusion can be drawn as to the intent and meaning of the act, and this, we are under the rules of statutory construction, legally bound to do, for it was said in the case of Sharp Vs. Producers' Produce Company, 47 S. W. 2nd, 242, Missouri Appeal, 189, the Court said:

> "In construing a statute the legislative intent must be kept in mind, if it may be ascertained, and the whole act, or such portions thereof as are in pari materia, should be construed, together. Keeney v. McVoy, 206 Mo. 42, 103 S. W. 946.* *"

Now turning to the act, we wish to particularly call attention to Section 3, which we have set out supra., and it will be noted that that section states that no person "shall engage in the business of operating a community sale", unless he is duly licensed. When we speak of the word "license" in the law, we think of that term in its ordinary meaning, or as stated in 37 Corpus Juris at Page 167, in part as follows:

> "The term 'license' is not involved in uncertainty or doubt in its general and popular sense as used with reference to occupations and privileges, it means a right or permission granted by some competent authority to carry on a business or do an act which without such license would be illegal* * *"
>
> "It has also been defined as the granting of a special privilege to one or more persons, not enjoyed by citizens generally, or, at least, not by a class to which the licensee belongs.

Therefore, as we have pointed out in Section 3, it is specifically stated that to obtain the license, one must engage in the business of operating a community sale and in Section 4 of the same act, we find that the first line states as follows:

> "any person engaged in establishing or operating a community sale* * *"

In our view it is clear that the act when read as a whole truly contemplates that by the term "community sales" is meant a series of sales, exchanges, or purchases by one engaged in that business, as distinguished from other persons in the community who might seek to sell certain cattle, swine

sheep, goats, or poultry at some sale that he might have, wherein he would offer the livestock to the community at public auction, or private sale. In other words, it is our view that in order that a sale may be termed a community sale, within the meaning of the act, that a "person", as that term is defined in paragraph D of Section 2, must engage in establishing or operating a series of sales exchanges or purchases or livestock at regular or irregular intervals at an established place in the state, directly or indirectly, for or on account of a producer or producers, consignor or consignors at public auction or at private sales subject to the exception set forth in Paragraph D., as distinguished from a person, firm, or corporation buying livestock on his or their own account, and moving the livestock to his or their feed lot or barn, and later, selling the livestock privately and not through an established series of sales or exchanges, would not be said to be engaged in the business of operating a community sale.

CONCLUSION

It is the opinion of this department that a "person", as that term is defined in Paragraph b, Section 2, Laws of 1943, Page 310, to be amenable to the act must engage in establishing or operating the business of a series of sales, exchanges, or purchases of livestock at regular or irregualr intervals at an established place in the state, directly or indirectly for or on account of the producer or producers, consignor or consignors thereof at public auction or private sale, subject to the exception set forth in Paragraph D, Section 2, Laws of Mo., 1943, Page 311.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney General

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