

AGRICULTURE:
LICENSES:

An out-of-state dealer in eggs who maintains no place of business for the sale of same within the state is not required to obtain a license under the provisions of Section 196.335, RSMo 1949; no provision exists for the collection of unpaid license fees for prior years.

October 1, 1952

10-6-52



Honorable Joseph T. Stakes
Director of Dairy Division
Department of Agriculture
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office. Your request reads as follows:

"Missouri is the receiving state for vast quantities of shell eggs being brought into the state from Iowa, Nebraska, Kansas, Oklahoma, Arkansas and Illinois. These eggs--depending upon the season of the year--are sold to egg breaking and processing plants and, also, they find their way into retail channels as shell eggs.

"It is to the interest of the Department of Agriculture as the administrative agency of the Egg Law, as well as to the interest of the consumers of both shell and processed eggs, that these products be subjected to the same inspectional effort as now applies to eggs produced within the state. The Department has experienced considerable difficulty in maintaining quality control of eggs imported into the state by reason of the fact that--to date--those persons engaged in interstate movement of shell eggs have not been licensed.

"Section 196.335 RSMo 1949 reads in part as follows: 'It shall be unlawful for any person, firm, or corporation to buy, sell, trade, or

traffic in eggs in this State without a license with the following exceptions:'. The exceptions following this sentence do not include dealers or haulers who bring eggs into Missouri markets.

"It appears, then, that those persons engaged in the interstate movement of eggs into Missouri do sell, trade, or traffic in eggs in this State.

"In view of the foregoing, an opinion is respectfully requested relating to:

"(1) Would out-of-state dealers referred to herein be required to obtain license to buy, sell, trade, or traffic in eggs in this State?

"(2) In the event individuals referred to in No. 1 above are required to secure a license, would such individuals also be required to pay the license fee retroactive to July 1, 1950-- which was the effective enforcement date of the Missouri Egg Law."

Section 196.335, RSMo 1949, to which you refer reads as follows:

"1. It shall be unlawful for any person, firm or corporation to buy, sell, trade or traffic in eggs in this state without a license with the following exceptions:

"(1) Those who sell only eggs produced by their own flock;

"(2) Hatcheries which purchase eggs used exclusively for hatching purposes;

"(3) Hotels, restaurants, and other public eating places where all eggs purchased are served in the establishment;

"(4) Bakeries, confectioneries, and ice cream manufacturers purchasing eggs for use and used only in the manufacture of their products;

"(5) Agents employed and carried on the payroll on a salary basis by licensed dealers.

"2. Each person firm or corporation engaged in buying, selling, trading, or trafficking in eggs, except those listed under subdivisions (1), (2), (3), (4), and (5)

above, shall obtain an annual license for each separate place of business from the commissioner of agriculture. The following types of licenses shall be issued:

"(1) A 'retail distributor's license' shall be required of any person, firm or corporation buying eggs exclusively from persons, firms or corporations that are licensed under this act for the sole purpose of selling such eggs at retail;

"(2) A 'small dealer's license' shall be required of any person, firm or corporation who buys, sells, or traffics in less than four hundred cases (thirty dozen per case) of eggs in any one week. This shall include retailers who also buy eggs from others than persons, firms or corporations licensed under section 196.310 to 196.360.

"(3) A 'large dealer's license' shall be required of any person, firm or corporation who buys, sells or traffics in over four hundred cases (thirty dozen per case) of eggs in any one week. This shall include retailers who also buy eggs from others than persons, firms or corporations licensed under section 196.310 to 196.330.

"(4) A 'processor's license' shall be required of any person, firm or corporation engaged in the business as defined in section 196.330.

"3. The annual license fee shall be:

(1) Retail distributors \$ 2.00
(2) Small dealers 2.00
(3) Large dealers 15.00
(4) Processors - license fees for processors shall be determined on the basis of cases (thirty dozen per case) of eggs processed in any one day, as follows:

(a) Less than fifty cases \$ 25.00
(b) More than fifty cases and less than two hundred and fifty cases . 50.00
(c) More than two hundred and fifty cases and less than one thousand cases 75.00
(d) More than one thousand cases . . 100.00

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"4. All licenses shall be conspicuously posted in the place of business to which it applies. The license year shall be twelve months or any fraction thereof beginning July first and ending June thirtieth.

"5. No license shall be transferable, but it may be moved from one place to another by the consent of the commissioner of agriculture."

Reading this provision in connection with other provisions of Chapter 196, discloses that it is not purely a revenue raising measure but has for its purpose the furthering of regulatory measures related to the inspection of eggs for human consumption. Such a legislative enactment is a valid exercise of the police power of the state although it may incidentally affect interstate commerce. The rule is stated in 11 Am. Jur., Section 94, page 85 as follows:

"The police power of the states was not surrendered when general power to regulate commerce with foreign nations and among the several states was conferred upon Congress. Especially when so exercised as to be an aid to commerce, the states or their municipalities, in the public health, the public morals, the public safety, and the public convenience--that is, they may adopt any legislation or regulation for any of those purposes and relative to interstate or foreign commerce, provided such laws or ordinances are local in their character and affect interstate commerce incidentally only. * * *"

It, of course, admits without question that a state may make such a requirement as the license here involved where it affects only local or intrastate commerce.

A literal reading of Section 196.335 RSMo 1949, indicates that it is limited in its application to the transaction of buying, selling or trading within this state. In other words, the sale would have to be consummated within this state, for the laws of a sovereign state having no extra territorial effect would not affect a sale or trade without the territorial limits, and the legislature is not presumed to have done a futile or meaningless thing.

We do not believe that the terms "traffic" or "trafficking" as used in this section means the mere act of transporting or shipping but is synonymous with the terms buying and selling. See 42 Words and Phrases, page 310, wherein the following definitions are found.

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"'Traffic' is the buying of something from another or the selling of something to another. In re Cameron Town Mut. Fire Lightning & Windstorm Ins. Co., 96 F. 756, 757.

"'Trafficking' imputes the carrying on or engaging in business. People v. Murawski, 68 N.E. 2d 272, 274, 394 Ill. 236.

"'Traffic' means the exchange of goods, wares, or merchandise between individuals, communities, or countries, whether directly by barter or by use of money, bills of exchange, etc.; trade. Mollendorf v. State, 173 P. 2d 519, 522, 67 Idaho 151."

Further indication that said section applies only to persons, firms or corporations actually engaged in doing business within this state is found in paragraph 2 and 4 of Section 196.335. Paragraph 2, provides that a license must be obtained for each separate place of business and paragraph 4 provides that the license must be conspicuously posted in the place of business. It, of course, would be meaningless to require a license for a place of business outside the state. Therefore, if the persons, firms or corporations about which you inquire are present whether by agent or otherwise within the state engaged in buying or trading in eggs they would be required to obtain a license as provided, for it is only under such circumstances that such a license bears a direct relation to the inspection laws and where no such relation exists, such a measure would exist only as an inoperative revenue law void under the commerce clause of the federal constitution.

Your next question deals with the liability of a person, firm or corporation who are subject to the provisions of Section 196.335 for license fees for prior years not collected. Each year's license must be obtained currently and we are unable to find any provision authorizing the collection of license fees for prior years when such were not paid. Therefore, we must conclude that the state cannot require the payment of a license fee for the years 1950 and 1951 where they are not paid.

CONCLUSION

Therefore, it is the opinion of this department that persons, firms or corporations located outside the State of Missouri and who do not maintain a place of business for the sale of eggs within this state but who nevertheless sell or ship such eggs to local processors is not required to obtain a license as provided in Section 196.335, RSMo 1949.

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We are further of the opinion that the state has no authority to collect license fees as provided in Section 196.335 for the years 1950 and 1951 where the same were not paid, there being no authorization for such collection.

Respectfully submitted,

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APPROVED:



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