

AGRICULTURE: Potash producers and other suppliers of unmixed
FERTILIZER: fertilizer materials who sell those materials to
DISTRIBUTORS: a distributor registered under Sections 266.290
through 266.350, RSMo Cum. Supp. 1957, but who
make deliveries of those fertilizer materials to
"blenders" or ultimate consumers on orders placed
with such a distributor are not to be considered
distributors within the provisions of Sections
266.290 through 266.350, RSMo Cum. Supp. 1957.

May 1, 1959



Mr. J. H. Longwell, Director
Missouri Agricultural Experiment Station
Division of Agricultural Science
University of Missouri
Columbia, Missouri

Dear Mr. Longwell:

This is in response to your letter of April 1, 1959, in which you make a request as follows:

"We will appreciate your opinion concerning the interpretation of the Missouri Fertilizer Law of 1953, Section 266.290, paragraph (2) and Section 266.300.

"Potash producers and some other suppliers of unmixed fertilizer materials at present are offering such materials for sale only to distributors who hold permits which have been issued by the Director in compliance with provisions of Section 266.300. The producers do not hold permits. In many instances the materials which are sold by producers to distributors are shipped by the producer directly to non-registered dealers in Missouri who sell directly to farmers. The materials are billed to the registered distributors who report the shipments and pay the fees in compliance with Section 266.320. The distributors do not handle the materials but act essentially as brokers between the producer and the dealers. The materials are shipped into the state in bags or bulk under the label and guarantee of the producer.

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"Until about two years ago substantially all unmixed fertilizer materials were shipped directly from the producer to the distributor. The distributor either used these materials in mixed fertilizers which were sold under the name and guarantee of the distributor or were resold as straight materials. The new shipping practice has developed in recent years because of the extensive development of blending. This practice, blending, consists of mixing materials by a relatively small operator in a local community, who mixes materials as requested by individual farmers.

"I am of the opinion that under these conditions the producer becomes a distributor under the terms of the law and should be required to register as a distributor."

Section 266.290 [1,2], RSMo Cum. Supp. 1957, reads as follows:

"The following words, terms, and phrases, when used in sections 266.290 to 266.350 have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"(1) 'Person' includes individuals, partnerships, associations, firms corporations, estates, trusts, receivers, or trustees appointed by any state or federal court.

"(2) 'Distributor' means any person who imports, consigns, manufactures, produces or compounds fertilizer, or offers for sale, sells, barter, or otherwise supplies fertilizers for consumption or use in this state; provided that this term shall not apply to any person who purchases fertilizer from a distributor registered under sections 266.290 to 266.350 and which fertilizer has been once sold in compliance with sections 266.290 to 266.350."

Section 266.300, RSMo Cum. Supp. 1957, reads as follows:

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"It shall be unlawful for any distributor to sell, offer for sale or expose for sale for consumption or use in this state any fertilizer without first securing a permit from the director. Such permit shall expire on the thirtieth day of June of each year. Application for such permit shall be on forms furnished by the director."

In reaching our conclusion we first wish to bring to your attention the purpose of this law which is set forth above in Section 266.300. You will observe that it is unlawful for any distributor to sell, offer for sale or expose for sale for consumption or use in this state any fertilizer without first securing a permit from the director. It is our belief that the words "for consumption or use" were intended to be restrictive as a part of the definition of the term "distributor". You will observe throughout Sections 266.290 through 266.350 that these words "for consumption or use" are used frequently as a means of expressing the purpose for which the fertilizers were sold by the distributor. Black's Law Dictionary, 4th Edition, defines consumption as an act or process of consuming; waste; decay; destruction; and using up of anything as food, heat or time. It cites several cases in support thereof. We believe that the cases which have attempted to define consumption or use demonstrate that those terms mean that final or ultimate purpose to which the goods are intended to be put. Therefore, it would appear that a distributor is a person who sells or otherwise supplies fertilizers to a person who intends to utilize those fertilizers ultimately and for the purposes for which they are intended, i.e., increased plant growth, etc. It is our view that the person who so disposes of the fertilizer in this State is a distributor, and it would make no difference if the fertilizer were to be shipped directly to the farmer by the producer or if it were shipped by the producer to the distributor and then by the distributor to the ultimate consumer so long as the ultimate consumer makes his purchase from the distributor.

The Fertilizer Act would appear to be based upon a situation in which there exists those persons commonly noted as distributors and those persons commonly noted as producers. We do not believe that it was intended that those persons who are normally considered producers be registered as distributors, even though those producers make deliveries directly to a consumer on orders placed with a distributor. Of course a producer

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who sells directly to the consumer would be a distributor and would be required to be licensed under this Act. It is conceivable that in some circumstances the person whom you designate as a blender might be considered a distributor if that blender is the one who sells to the ultimate consumer. However, because of the proviso in the definition of the term distributor, this blender would not be subject to the terms of this Act when he makes his purchases from a distributor registered under the sections of this Act.

CONCLUSION

Therefore, it is the opinion of this office that potash producers and other suppliers of unmixed fertilizer materials who sell those materials to a distributor registered under Sections 266.290 through 266.350, RSMo Cum. Supp. 1957, but who make deliveries of those fertilizer materials to "blenders" or ultimate consumers on orders placed with such a distributor are not to be considered distributors within the provisions of Sections 266.290 through 266.350, RSMo Cum. Supp. 1957.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James B. Slusher.

Yours very truly,

JOHN M. DALTON
Attorney General

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