



July 20, 1961

Honorable Bill Davenport
Prosecuting Attorney
Christian County
Ozark, Missouri

Dear Sir:

We are in receipt of your letter requesting an opinion of this office, which letter reads as follows:

"I have been requested to obtain the opinion of your office as to whether live minnows in possession of a licensed, privately owned, minnow hatchery on January 1st of any year are taxable property to be assessed by a county Assessor and entered on the tax rolls the same as other personal property, and also whether a county merchant's license is required for such a hatchery."

Further information supplied by you indicates that the minnows are sold mainly from the hatchery at wholesale with a relatively small retail sale in each case, and that none of the hatcheries raises minnows on a contract basis.

Enclosed please find an official opinion of this office rendered under date of September 20, 1950, to the Honorable Clarence Evans, holding that chicken hatcheries which are not operated as a part of a farming operation nor hatching eggs on a contract basis are to be assessed and taxed as merchants. Inasmuch as the business involved in your inquiry is similar in nature to that considered in the enclosed opinion, it must be concluded that the operator of minnow hatchery also falls within the statutory definition

of merchant quoted therein (now Sec. 150.010, RSMo 1959). The qualification as to the farm product's exemption (now Sec. 150.030, RSMo 1959) mentioned in that opinion is not applicable in your case since minnows could hardly be considered to be farm products.

It is the opinion of this office, therefore, that live minnows in a hatchery operated under the circumstances you describe are not to be assessed as personal property on January 1st, but rather are to be assessed and taxed under the merchant's tax as set out in Sections 150.010 thru 150.070.

In respect to your inquiry as to the requirement of a merchant's license for these hatcheries, we direct your attention to Section 150.100, RSMo 1959, which is as follows:

"No person, corporation, co-partnership or association of persons shall deal as a merchant without a license first obtained according to law; and every applicant for a license shall affirmatively state in a written application whether goods, wares and merchandise are to be sold by applicant at wholesale, at retail, or at both wholesale and retail. Every person or corporation so offending shall upon conviction thereof be deemed guilty of a misdemeanor."

Having held that the operators of minnow hatcheries in these circumstances are merchants, it follows that each must obtain a merchant's license in accordance with the foregoing statute.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JJM:ml
Enc.