

Anti-Trust:
MONOPOLIES:
PRICE FIXING:
AGREEMENT TO FIX PRICES:
COMBINATIONS IN RESTRAINT OF
TRADE:

An agreement by retail gasoline filling stations to fix prices at which they sell gasoline violates the Anti-Trust Laws of Missouri contained in Chapter 416, RSMo 1959.

December 11, 1961



Honorable John A. Honssinger
Prosecuting Attorney
Laclede County
Lebanon, Missouri

Dear Mr. Honssinger:

This office is in receipt of your request for an opinion dated December 1, 1961, which reads as follows:

"The various retail service stations here in Lebanon, Missouri, representing various oil companies desire to organize and band together for the purpose of voluntarily establishing and agreeing upon the prices to be charged for various grades of gasoline sold by them. As I have stated, such an agreement would be strictly voluntary, but would involve all service station operators. Would such an agreement violate the antitrust laws of this state?"

As we understand the factual situation you present it is that all, or a part of, the retail service stations plan to agree to establish the price at which each of them will sell gasoline. Your inquiry is whether or not this arrangement or agreement, even though voluntarily entered into by each of them, would violate the Missouri Anti-Trust Laws.

As we understand the proposition you present, it amounts to an agreement between retail filling stations, who are competitors of one another, to fix the price at which gasoline will be sold at each of their stations. This is what is known in the cases as "horizontal price fixing".

Chapter 416, RSMo 1959, deals with monopolies, discriminations and conspiracies. Section 416.020 reads as follows:

"Any person who shall create, enter into, become a member of or participate in any pool, trust, agreement, combination, confederation or understanding with any other person or persons to regulate, control or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience or repair, or any product of mining, or any article or thing whatsoever, of any class or kind bought and sold, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or participate in any pool, trust, agreement, contract, combination, confederation or understanding, to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever of any class or kind bought and sold, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and be punished as provided for in sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400."

The Supreme Court of Missouri in the most recent case on this subject, *Temperate v. Horstman*, 321 SW2d, l. c. 662, 663, referred to the case of *State ex inf. Dalton v. Miles Laboratories*, 365 Mo. 350, 282 SW2d 564, and discussed the so-called "vertical price fixing" in both cases and held that our statutes prohibit both "vertical" and "horizontal" price fixing. In the *Temperate* case l. c. 662, the Court said:

"***This type of price-control provision may be described as 'vertical price fixing,' discussed and condemned in *State ex inf. Dalton v. Miles Laboratories*, Banc, 365 Mo. 350, 282 SW2d 564. In our case the contract itself bespoke price fixing; in the *Miles* case the practice was deduced from the evidence of activities. As the court there said, our statutes are so explicit and all inclusive that there is no room left for construction by the courts; the court said further, *loc. cit.* 573: *** Section 416.010 and 416.020

denounce and condemn any person entering into any combination, agreement or understanding with any other person or persons (note the use in the disjunctive of both singular and plural) in restraint of trade or competition or to regulate, control, fix or maintain the price of any article; and, Section 416.040 is directed against all arrangements, contracts, agreements, combinations or understandings between any two or more persons designed or tending to lessen full and free competition in, or to increase the market price of, any product. ***' It was specifically held that our statutes are not aimed solely at combinations of competitors of 'horizontal' price fixing. Section 416.040 specifically declares void 'all *** contracts *** between any two or more persons *** which tend to lessen *** full and free competition in the *** sale *** of any product *** and *** contracts *** made with a view to increase, or which tend to increase, the market price of any product ***.' Section 416.020 declares that any person who agrees with any other person to 'regulate, control or fix the price of any article *** commodity *** bought and sold ***' is guilty of a conspiracy in restraint of trade and shall be punished therefor. These, together with Sections 416.010 and 416.110 must be construed together as a declaration of policy. The last cited section specifically declares that all contracts made in violation of any of the provisions of Chapter 416 are void. And see, generally, State ex rel. Taylor v. Anderson, 363 Mo. 884, 254 SW2d 609; State ex inf. Major v. Arkansas Lumber Co., 260 Mo. 212, 169 SW 145; and Finck v. Schneider Granite Co., 187 Mo. 244, 86 SW 213 (involving an attempt to recover under an illegal contract). The test is not whether the agreement unreasonably lessens competition or increases prices. State ex rel. Barrett v. Boeckeler Lumber Co., 301 Mo. 455, 256 SW 175; and these statutes would seem to permit of no exception by reason of the amount or degree of restraint or the volume of business affected. State ex rel. Kimbrell v. People's Ice, Storage & Fuel Co., 246 Mo. 168, 151 SW 101. It is not necessary to find a monopoly or a possibility of monopoly in order to find a violation; the statutes do not so require. We do not mean to say that a mere incidental uniformity of prices establishes, in itself, an unlawful agreement or understanding, State ex rel. Taylor v.

Honorable John A. Honssinger

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Anderson, 363 Mo. 884, 254 SW2d 609. But here we have an express agreement in writing for the control of retail prices, plus at least some active steps in enforcement. ***"

In the situation which you present, as we understand it, it is the opinion of this office that the agreement proposed by the retail filling stations would be in direct violation of the Anti-Trust Laws of Chapter 416, RSMo 1959.

CONCLUSION

It is therefore the opinion of this office that an agreement among retail filling stations to fix the price at which gasoline will be sold at each of their stations, violates the Anti-Trust Laws of Missouri contained in Chapter 416, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, J. Gordon Siddens.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JGS:jh