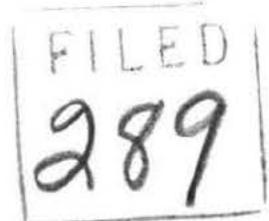


October 6, 1965



Honorable Don E. Burrell
Prosecuting Attorney
Greene County
Springfield, Missouri

Dear Mr. Burrell:

This letter is in response to your request dated July 9, 1965, relating to the interpretation of Chapter 416. You have stated the problem as follows:

"The problem for which I would like your opinion arises from the fact that there is a small grocery corporation in our county that gets together weekly on an informal basis with four other small grocery stores for the purpose of joint advertising. They use a trade name linking themselves together in what appears to be a single entity doing business at several locations. They then decide what items in their stores to advertise and at which price. Each of the individual owners then sells these particular items at the price advertised in accordance with the ad.

The attorney for one of these stores has requested my opinion as to whether this activity is in violation of Chapter 416 RSMo 1959, and as to whether any person would be making a false affidavit by submitting the anti-trust affidavit as required in Section 416.200."

* * * * *

"The second question is whether these stores would be in violation of Chapter 416 if they entered into a written agreement concerning these same activities."

Honorable Don E. Burrell

This office in Opinion No. 42 dated December 11, 1961, to John A. Honssinger, copy of which is herewith enclosed, held that a price fixing agreement involving retail filling stations violates Chapter 416 of the Missouri Antitrust Laws.

The particular section of the statute relating to price fixing, Section 416.020 RSMo 1959, is in part as follows:

"Any person who shall * * * enter into, become a member of or participate in any * * * agreement * * * or understanding with any other person or persons to * * * fix the price of any article of manufacture * * * merchandise, commodity * * * or any article or thing whatsoever of any class or kind bought and sold * * * shall be deemed and adjudged guilty of a conspiracy in restraint of trade * * *"

This statute plainly prohibits any agreement or understanding to fix the price of an article of merchandise. Agreement to do so constitutes a per se violation of this statute. The vital words in our view are agreement or understanding to fix prices.

As we understand the facts the participants agree among themselves upon a joint ad to sell certain articles at a certain price as specified in the ad. Even if evidence of such an agreement or understanding were not available the ad itself would be very persuasive evidence of an agreement to fix the price of the articles so jointly advertised. It would follow that if Section 416.020 is violated then Section 416.200 would be violated if such an affidavit were made.

It makes no difference whether the agreement or understanding is oral or written.

The Missouri cases cited in the enclosed opinion make clear the meaning of this statute. In addition there are many federal cases dealing with a closely analogous section of the Sherman Act which consistently hold that agreements to fix prices of merchandise violates the law.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

JGS/ms/aa