

AGRICULTURE - STATE BOARD - ICE CREAM MANUFACTURERS - WHOLESAL
AND RETAIL manufacturers of ice cream required to have permit
to manufacture for sale at reall.

Sec 13069-71 Laws 33

12-11
December 5, 1933



Honorable J. C. Breshears
Commissioner Department of Agriculture
Jefferson City, Missouri

Dear Mr. Breshears:

This Department acknowledges receipt of
your letter dated October 21, 1933, as follows:

"We kindly ask your opinion on
Missouri Ice-Cream Law, pertaining
to the following question:

Would an ice-cream manufacturer
who has a permit to manufacture
ice-cream for wholesale, and in
addition to his wholesale trade
has some retail trade, be required
to have a permit for retail? "

Section 13069 Laws Missouri 1933, page 253,
provides:

"After the taking effect of this
article it shall be unlawful to
make, manufacture, or in any manner
produce any ice cream, without first
obtaining a permit from the Commis-
sioner of agriculture as in this
article required. This article shall
not be construed to prohibit the
resale of ice cream by persons purchas-
ing the same from any lawful holder of
such permit, or to prohibit the sale
of ice cream by persons purchasing the
same from any manufacturer in any other
state, whose factory, plant, building,
premises, equipment and method of

conducting business, conforms to the schedule adopted under authority of this article for inspecting and grading ice cream factories, plants, buildings, premises, equipment and method of conducting business. Provided, however, that all permits for the manufacture of ice cream heretofore issued by authority of the laws of this state shall, unless sooner revoked by authority of law, be valid, for the period for which issued."

Section 13071 Laws Missouri 1933, page 254, reads:

"Each manufacturer of ice cream in cities or towns in this state which now have or may hereafter have a population of five thousand or over who manufacture ice cream for sale at wholesale shall pay an annual fee of one hundred dollars for a permit to conduct his business, and each manufacturer of ice cream in cities or towns in this state which now or may hereafter have a population of five thousand or over who manufacture ice cream for sale at retail shall pay an annual fee of five dollars for a permit to conduct his business. Each manufacturer of ice cream in cities or towns of less than five thousand and more than two thousand population and in any suburban or rural part of the state of Missouri who manufacture ice cream for sale at wholesale shall pay an annual fee of forty dollars and in cities or towns of a population of two thousand and less twenty dollars for a permit to conduct his business and each manufacturer of ice cream in cities or towns of less than five thousand population and in any suburban or rural part of the state of Missouri who manufacture ice cream for sale at retail shall pay an annual fee of three dollars for a permit to conduct his business; such fees shall be paid into the state treasury, to the credit of the general revenue fund of the state. For the purpose of this article, the term 'wholesale manufacture' shall include every manufacturer of ice cream who sells at wholesale for resale, and the term 'retail manufacture' shall include every manufacturer who

manufactures and sells ice cream at retail: Provided, that nothing in this article contained shall be so construed as to require a permit to authorize persons or committees not otherwise engaged in the manufacture of ice cream, to manufacture and make ice cream for their own use or for the purpose of sale at picnics, church socials, or other entertainments of like character. All manufacturers of ice cream shall be subject to inspection by the commissioner of agriculture or his inspectors during all reasonable hours, or any other officers under any law now or hereafter in force in this state."

Section 13069, above quoted, makes it unlawful to make, manufacture or produce ice cream without first obtaining a permit so to do.

Section 13071, above quoted, may be subdivided or analyzed as follows:

1. (a) Manufacturers of ice cream in cities or towns in this state which now have or may hereafter have a population of 5,000 or over, who manufactures ice cream for sale at wholesale shall pay an annual fee of \$100.00 for a permit to manufacture ice cream at wholesale.

(b) Each manufacturer of ice cream in the city or towns in this state which have or may hereafter have a population of 5,000 or over who manufactures ice cream for sale at retail shall pay an annual fee of \$5.00 for a permit to manufacture ice cream for sale at retail.
2. (a) Each manufacturer of ice cream in cities or towns of less than 5,000 and more than 2,000 population, and also each manufacturer of ice cream in any suburban or rural part of the state of Missouri who manufactures such ice cream for sale at wholesale shall pay an annual fee of \$40.00 for a permit to manufacture ice cream for sale at wholesale.

(b) Each manufacturer of ice cream in cities or towns of a population of 2,000 and less, \$20.00 for a permit to conduct the business of manufacturing ice cream.

(c) Each manufacturer of ice cream in cities or towns of less than 5,000 population and in any suburban or rural part of the state of Missouri, who manufactures ice cream for sale at retail shall pay an annual fee of \$3.00 for a permit to manufacture ice cream for sale at retail.

3. Section 13071, as to that part referred to in 2-(b) above, provides:

"* * * and in cities or towns of a population of 2,000 and less \$20.00 for a permit to conduct his business" * * *".

It is clear that the section requires \$100.00 for a permit to manufacture ice cream for sale at wholesale in cities or towns having a population of 5,000 or over that number.

It is also clear that manufacturers of ice cream for sale at retail in cities or towns in this state having a population of 5,000 or over must pay an annual fee of \$5.00 for a permit to conduct such retail business.

Manufacturers of ice cream for sale at wholesale in cities or towns of less than 5,000 and more than 2,000 population and manufacturers in any suburban or rural part of the state, are required to pay an annual fee of \$40.00 to conduct the manufacture of ice cream at wholesale. Then follows that part of the section last above quoted but it will be noted that it is not stated whether the permit for which \$20.00 is to be paid is a permit to manufacture for sale at wholesale or retail, but the manufacture of ice cream for sale at wholesale is undoubtedly intended to be covered by this part of the section last above quoted, because the section refers to manufacturers of ice cream in cities or towns of less than 5,000 and more than 2,000 population and in any suburban or rural part of the state who manufactures for sale at wholesale shall pay a fee of \$40.00. Both provisions being construed together with that part of the section covering cities having a population of 5,000 or over, would include the entire state. Following that part of section

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13071 last above quoted, it is provided that each manufacturer of ice cream for sale at retail in cities or towns of less than 5,000 population, and manufacturers for sale at retail in any suburban or rural part of the state shall pay an annual fee of \$3.00 for a permit to manufacture for sale at retail, so that by each of the separate provisions of Section 13071 every manufacturer of ice cream for sale at wholesale in this state as well as every manufacturer of ice cream for sale at retail in this state, is required to have a separate permit to conduct the manufacture of ice cream at wholesale and the manufacture of ice cream at retail.

We are of the opinion that an ice cream manufacturer who has a permit to manufacture ice cream for wholesale is also required to have a permit to manufacture ice cream for sale at retail if such manufacturer does, in fact, manufacture ice cream for sale at retail.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

ROY McRITTRICK
Attorney General.

GL:LC