

BUREAU OF MINES AND  
MINING:

Person mining shale which is manufactured into brick before sale is liable for mining inspection fee.

May 4, 1942

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Mr. John A. Skinner  
Chief Inspector  
Missouri Bureau of Mines  
Jefferson City, Missouri

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Dear Sir:

We are in receipt of your communication of April 8, 1942, in which you inquire whether a certain manufacturing company is liable for the inspection fee provided in Section 14842, R. S. Mo. 1939, where the company in question mines shale deposits on its own lands and uses such product in the manufacture of brick and tile. It is contended by the company officials that this does not constitute a sale, shipment or disposal of said shale within the meaning of the section above cited.

Section 14842, R. S. Mo. 1939, is a provision enacted by the Legislature to insure the safety of miners engaged in taking certain mineral and other products from the soil by mining methods. It is as follows:

"Every person, firm or corporation engaged in the mining or production within this state, of lead, zinc, coal, clay, shale, silicate or calamine, shall, within thirty days after the expiration of the quarter-annual period ending on the last day of March, 1917, and within thirty days after the ending of each quarter-annual period thereafter, file with the chief mine inspector and the state treasurer, a statement, under oath, on forms to be prescribed and furnished in triplicate by the chief mine inspector, showing the total number of tons of coal,

clay, shale, lead concentrates or galena, zinc ore or concentrates thereof, lead carbonate or concentrates thereof, zinc carbonate or concentrates thereof, zinc silicate or calamine or concentrates thereof, sold, shipped or otherwise disposed of during the last preceding quarter-annual period; and shall at the same time pay to the state treasurer mine inspection fees as follows: On all lead concentrates or galena, three cents per ton; on all zinc ore or concentrates thereof, three cents per ton; on all lead carbonate or concentrates thereof, one and one-half cents per ton; on all zinc carbonate or concentrates thereof, one and one-half cents per ton; on all zinc silicate or calamine or concentrates thereof, one and one-half cents per ton; on all coal, two mills per ton; on all clay, two mills per ton; on all shale, one mill per ton."

The contention of the manufacturer in the instant case appears to be that the conversion of shale into brick and tile and the subsequent sale of such manufactured products does not constitute a sale, shipment or disposal of such shale. We are unable to agree with this contention. It is obvious to us that a sale of the manufactured product is a sale within the meaning of the statute, but even if this be not true, the courts of Missouri and other jurisdictions have given a wide meaning to the term "disposed of", which clearly includes the process in question.

In *Bullene v. Smith*, 73 Mo. 151, the court interpreted the word "disposed" as used in the statutes which provide a basis for attachment, as follows, l. c. 161:

"The word 'disposed,' as used in this subdivision of the statute was, we think, intended to cover and does cover all such alienations of property as may be made in ways not otherwise pointed out in the statute; \* \* \*."

In *Holland v. Bogardus-Hill Drug Co.*, 314 Mo. 214, our Supreme Court gave the following definition of the term "dispose of," l. c. 236:

"This court has expressed itself in no uncertain language, in defining the words 'use' and 'dispose of' in the above will as will be seen by reference to *St. Louis Union Trust Co. v. MacGovern Co.*, 297 Mo. l. c. 535, where Small, J., said: 'It is a general rule that the words 'dispose of' have a broader meaning than the word 'sell,' and include the power to exchange and sell unless restricted by the context or circumstances, which cannot be soundly asserted in the case before us. (3 Words and Phrases, pp. 2117 and 2118; 2 Words and Phrases (2d Series) pp. 80 and 81; *Ironside v. Ironside*, 150 Iowa, 628, 130 N. W. 414, 416; *Pearre & Co. v. Hawkins*, 62 Tex. 434, 437; *Whitfield v. Thompson*, 38 So. 113-117; *Williams, Lessee, v. Veach*, 17 Ohio, 171, 181; *Gould v. Head*, 41 Fed. 240, 245; *Rogers v. Goodwin*, 2 Mass. 475, 477; *Noyes v. Lane*, 45 N. W. 327, 328; Appeal of *Waddell*, 84 Pa. St. 90, 96; *Burr v. Boyer*, 2 Neb. 265, 267; *In re Hesdra's Estate*, 20 N. Y. Supp. 79, 80.)'"

Numerous definitions of the term are to be found in *Words and Phrases* (Perm. Ed.), Vol. 12, pp. 681 to 695. As examples of the definitions there found, we quote the following, l. c. 691, 692:

"Words 'disposed of' mean to part with, to relinquish, to get rid of. *Montgomery v. Carlton*, 126 So. 135, 142, 99 Fla. 152.

"To 'dispose of' means to part with, to relinquish, to get rid of, to alienate, to effectually transfer. *Connely v. Putnam*, 111 S. W. 164, 166, 51 Tex. Civ. App. 233.

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"Expression 'to dispose of' is very broad, and signifies more than 'to sell,' and includes every possible mode of alienation or disposition of property. State ex rel. Cross v. Board of Land Commissioners, 62 P. 2d 516, 517, 50 Wyo. 181."

Regardless of whether the transition of shale into brick constitutes a sale under the statutes, it certainly constitutes an alienation or disposal of the product within the application of the above definitions.

CONCLUSION

It is, therefore, the opinion of this department that every person, firm or corporation engaged in the mining or production within this state of shale which is made into brick and tile and subsequently sold or otherwise disposed of is liable for the inspection fee set out in Section 14842, R. S. Mo. 1939.

Yours very truly

ROBERT L. HYDER  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK  
Attorney General

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