Dairy License—Requirement by Farmers Producing and Selling a Small Amount of Butter.

Chapter 262 of the Laws of 1921 construed not to require a farmer, whose principal business is not that of butter-making, and who does not conduct a dairy but who incidentally produces some butter and sells the same, to procure a license.

W. J. Butler, Esq.,
  Livestock Sanitary Board,
    Helena, Montana.

My dear Dr. Butler:

You have inquired whether farmers selling an excess of butter produced during certain times of the year upon their farms and from their cows are required to obtain a license under Chapter 262 of the Laws of 1921, and if so, in what classification they be placed for the purpose of determining the amount of the license fee.

Section 23 of Chapter 262 of the Laws of 1921 reads, in part, as follows:

"It shall be unlawful for any person, firm, or corporation to conduct any creamery, receiving station, dairy, butter, cheese, condensed milk or ice cream factory within the State of Montana without first securing a license issued by the Livestock Sanitary Board, which license shall expire on the last day of December of the current year in which it is issued:
* * *

"The following schedule of license fees shall be charged for all licenses issued under the provisions of this Section by the Livestock Sanitary Board:

"Schedule of License Fees.

"Dairies of 20 cows or less selling milk or cream, or both shall pay an annual license fee of $1.00;

"Dairies of over 20 cows selling milk or cream, or both shall pay an annual license fee of $2.50;

"Cheese factories and butter factories and condensed milk facories having an annual output of less than five hundred thousand pounds shall pay an annual license fee of $5.00;

"Cheese factories and butter factories and condensed milk factories having an annual output of five hundred thousand pounds or over shall pay an annual license fee of $25.00;

"Ice cream factories, not making butter and cheese, having an annual output of less than fifteen thousand gallons shall pay an annual license fee of $5.00;

"Ice cream factories, not making butter and cheese, having an annual output of fifteen thousand gallons or more shall pay an annual license fee of $25.00;

"Milk plants shall pay an annual license fee of $10.00:

"Receiving stations for milk or cream, or both, shall pay an annual license fee of $1.00."

It is to be observed that the above section, in classifying dairies according to number of cows, contains the phrase "selling milk or cream" and makes no reference to the selling of butter. Obviously, if the production of butter from farms or farm dairies comes within the provisions of the foregoing Act at all, it must be under the first or second subdivision, and inasmuch as they specifically refer to sales of milk or cream to the exclusion of sales of butter, the inference is that the Legislature did not intend to include dairies producing butter only in these subdivisions. Provision as to classification and licensing for production of butter according to amount is contained in the paragraphs next following, which tends to sustain the foregoing.

This view is further supported by the fact that the same Legislature in Section 17, Chapter 216, of the Laws of 1921, provided a safeguard to the public in connection with the sales of butter different from that provided in the above license law, the provision being as follows:

"That butter sold in the State of Montana, whether manufactured on a farm or in a creamery, must have the maker's name clearly written or printed on the package in which it is sold, and upon each pound package of butter so sold or offered for sale, the words 'net weight sixteen ounces' shall appear."

It is therefore my opinion that farmers whose principal business is not that of butter making, and who do not conduct dairies as such, but who incidentally produce some butter from their farms and sell the same, are not required to procure a license under Section 23 of Chapter 262 of the Laws of 1921.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.