

Opinion No. 180.

Montana State Board of Food Distributors—Dairies—Statutes—Construction.

HELD: A dairy which does not maintain a store is not a food store within the meaning of Chapter 49, Laws of 1939, and is not subject to license and regulation as provided by said chapter.

December 21, 1939.

Mr. Harold K. Anderson  
County Attorney  
Helena, Montana

Dear Mr. Anderson:

You have submitted, for my opinion, the question whether a person engaged in the dairy business and who maintains no store, is subject to the license fee provided by Section 10, Chapter 49, Laws of 1939.

Section 10 of said Act provides:

"The state board of food distributors shall require and provide for the annual registration and licensing of every food store now or hereafter doing business within this State. \* \* \*"

Section 1 of said chapter defines "food store," as follows:

"The term 'food store' shall mean a grocery store, restaurant, pool hall, hotel, or other established place regularly licensed by the state board of food distributors, in which food or drinks are compounded, dispensed, vended, or sold at retail."

As defined above, we do not think that the ordinary dairy which does not conduct a store can be classed as a food store. If a dairy is a food store then any ranch, farm or truck garden which sells food at retail is also a food store. We do not think the legislature intended that the phrase "food store" should be so far reaching. If they had so intended they would have been more explicit; furthermore, the rule of construction known as "ejusdem generis" does not permit such construction. According to this rule, the words "or other established place" mean such other established places like a grocery store, restaurant, pool hall or hotel, that is, places of the same general nature or class as those enumerated (59 C. J. 981, Section 581). This rule is based on the obvious reason that had the legislature intended the general words "or other established place" to be used in their unrestricted sense they would have made no mention of the particular class, such as grocery store, restaurant, pool hall and hotel.

As further showing that the legislature did not intend to classify dairies as food stores it is proper to point out that the legislature had already provided by Section 3282, R. C. M., 1935, that dairies should be specially regulated and licensed by the Montana Livestock Sanitary Board. They are also regulated by cities having board of health regulations. Further regulation by the Montana State Board of Food Distributors would be not only unnecessary but conflicting and burdensome.

We are therefore of the opinion that a dairy which maintains no store is not subject to the provisions of Chapter 49, Laws of 1939.