

Licenses, Dairy—State Dairy Commission—Milk Plants—Ice Cream Factories—Butcher Shops and Stores Handling Milk and Cream.

All dairies must secure licenses, but only retailers are required to pay fees prescribed by Section 3-A of Chapter 199, Session Laws of 1919.

Where one person is engaged in operating a creamery and milk plant, two fees must be paid.

Where milk is sold from a milk station, a separate license must be procured therefor.

A Babcock Tester's Certificate runs without limitation as to time.

Stores and butcher shops selling milk and cream in the original package are not required to pay a license or fee.

May 24, 1919.

Mr. W. H. Fluhr,
State Dairy Commissioner,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of recent date asking me to advise you regarding licenses provided for by Chapter 199, Session Laws of 1919.

First, with reference to dairy licenses. Section 3-A makes it unlawful for any person to conduct any dairy in this state without first receiving a license issued by the State Dairy Commission, which license shall expire in the last day of December of the year in which the same is issued, defines the term "Dairy" as including every person, firm or corporation keeping and milking five or more cows and selling any milk or cream therefrom, and fixes the fees to be paid by dairies as follows:

Dairies of ten cows or less retailing milk or cream \$1.00 a year; dairies of over ten cows and less than twenty retailing milk or cream \$2.50 per year; dairies of over twenty cows and less than thirty retailing milk or cream, or both milk and cream \$3.50 a year; dairies of over thirty cows and less than forty retailing milk or cream, or both milk and cream \$5.00 a year; dairies of over forty cows retailing milk or cream or both milk and cream \$10.00 a year.

The first provision of this section is plain. It requires every dairy to procure a license, no distinction being made between dairies selling their product at retail and those selling at wholesale. And it seems to me that the provision fixing the amount of fees to be paid by dairies is equally clear. It requires that fees for licenses shall be paid by dairies retailing milk or cream, or both. Doubtless the legislature had in mind the fact that dairies not selling at retail could only sell to ice cream factories, cheese factories, creameries and milk plants, and these being required to pay fees for their licenses, if such dairies should also be required to pay fees for their licenses the result would be the payment of two fees for selling and handling the one product. I am, therefore, of the opinion that all dairies must procure licenses but that only dairies retailing milk or cream, or both, are required to pay the fees specified in such section.

With reference to licenses, and the fees to be paid therefor, by ice cream factories, milk plants and creameries, said Section 3-A requires each of these to procure a license. Said section also specifies the fee to be paid by ice cream factories *engaged only* in the manufacture of ice cream, by creameries, by milk plants and by pasteurizing plants, but the words "engaged only" appear in only those provisions specifying the fees to be paid by ice cream factories. From the manner in which these fees are segregated, I am of the opinion that if an ice cream factory is engaged only in the manufacture of ice cream a license fee must be paid as provided in such section, but that if such ice cream factory be operated in connection with a creamery or in connection with a milk plant, then the license fee for the creamery, or for the milk plant, includes the fee for the ice cream factory. And I am also of the opinion that it was the intention of the legislature to require a fee to be paid for each creamery and for each milk plant, without regard to the fact that the same persons, firm or corporation may be operating both a creamery and milk plant, and that, therefore, if one person, firm or corporation is engaged in operating both a creamery and a milk plant, such person, firm or corporation must pay two fees, one for the creamery and one for the milk plant.

With reference to milk plants you state that you have interpreted milk plants to mean places where milk or cream is purchased from different parties and sold to retail trade, you ask if, where one concern has milk stations located in different parts of the state at which milk or cream is purchased and shipped to the head factory, such concern is required to pay a fee for each of such stations. I believe that you have given the proper meaning to the word milk plant, and whether each station maintained by one concern is required to pay a fee, depends, it seems to me, entirely on the business done at such stations. If a station is maintained simply for the purpose of purchasing milk or cream and shipping it to the head factory, no sales being made from such station, either retail or wholesale,

then I do not believe that it can properly be considered as a milk plant and required to pay a fee, but if milk or cream, or both, are sold from such a station at either wholesale or retail, then a separate license must be procured for such station and a fee paid therefor, exactly the same as though it had no connection with any other plant, creamery or factory.

Referring to Section 7 of said Chapter 199, which amends Section 11, Chapter 77, Session Laws of 1913, and provides for the issuance of a Babcock tester's certificate and the fee to be paid therefor, you state that there is no limit or time set for the expiration of such certificate, and that you are stating in the certificates that they will be in force for two years, at which time they will be renewed upon payment of \$2.00 as a renewal fee. In this I think you are in error. This section requires the person applying for such a certificate to pass such an examination as the Dairy Commissioner shall prescribe, upon the successful completion of which examination, and on payment of a fee of \$2.00 a certificate will be issued to him, and it was evidently the intention of the legislature that when an applicant passed this examination and procured the certificate such certificate should remain in force without limitation as to time. Lawyers, physicians, pharmacists, engineers, etc., are required to pass certain examinations before they can engage in these professions or occupations, and after passing the same receive certificates for which they are compelled to pay a certain fee, and these certificates, when once issued, are without limit as to time and require no renewal. And the certificate issued to a successful applicant under this section stands on exactly the same footing. When the certificate is once issued to him, he is not required to pay any additional or renewal fee at any future time, or to have such certificate renewed, but it stands without limitation as to time.

With reference to butcher shops and stores handling milk and cream. So long as these places simply purchase milk and cream in bottles and sell the same in the original packages, such business being merely incidental to and in connection with their other business, I do not believe that they come within the purview of the law, and therefore are not required to procure licenses or pay any fees. Of course it may be possible that one of these places may handle milk or cream, or both, in such a manner that it can be said to be a creamery, or milk station, in which case a license must be procured and a fee paid.

Respectfully,

S. C. FORD,

Attorney General.