

Farm Produce—Constitutional Law—Department of Agriculture—Dealers.

Chapter 147, laws of 1925, is a police regulation rather than a revenue measure and is not unconstitutional by reason of the fact that it exempts from its operation established dealers and merchants with a commercial rating and also exempts dealers in grain, livestock and poultry.

A. H. Bowman, Esq.,
Commissioner of Agriculture,
Helena, Montana.

June 12, 1925.

My dear Mr. Bowman:

You have requested my opinion whether chapter 147, session laws of 1925, violates the constitutional requirement of uniformity in taxation by reason of the fact that section 1 of the act exempts from its operation wholesale or retail dealers or merchants who are rated in commercial agencies and also exempts dealers in grain, livestock and poultry.

The act is one providing for the regulating, licensing and bonding of dealers in farm produce in car lots. It is clearly a police measure designed to regulate certain dealers in farm produce rather than a revenue measure. As said by the supreme court in *State ex rel. City of Bozeman vs. Police Court*, 68 Mont. 435, 442:

“Where the fee is imposed for the purpose of regulation and the statute requires compliance with certain conditions in addition to the payment of the prescribed sum, such sum is a license proper imposed by virtue of the police power; but when it is exacted solely for revenue purposes without any further condition it is a tax.”

Being a police regulation rather than a revenue measure, the constitutional requirement as to equality and uniformity does not apply to the same extent that it does in the case of a property tax. The rule is thus stated in 25 Cyc. page 605:

“The requirement in a state constitution that taxation shall be uniform and equal refers particularly to the taxation of property, and does not necessarily prohibit the imposition of a license tax on a business or avocation. Accordingly it has been repeatedly held that the fact that one class of business is taxed and another is not, or that different business or avocations are taxed unequally, does not affect the validity or uniformity of the tax.”

It is my opinion that this act is not open to the objection of being either unreasonable or discriminatory. A regularly established dealer or merchant rated in the commercial agencies is less apt to require police supervision and can be more readily compelled to live up to his engagements than a person or firm of transitory and temporary character; hence the reason for excepting the former class from the terms of the act. The act also exempts dealers in grain, livestock and poultry.

Grain dealers are already subject to regulation by the state under the division of grain standards and marketing of the department of agriculture; hence there is not the same reason for requiring further police supervision of grain dealers as there is in the case of dealers in the other farm produce mentioned in the act. Livestock and poultry are in my opinion not "farm produce" in the sense that this term is customarily used to designate grain, hay, potatoes, apples, vegetables and other products of the soil. Hence the legislature may, in my opinion, exempt from the provisions of the act dealers in livestock and poultry with the same propriety with which it might have exempted dealers in hides, bonemeal or feathers.

Very truly yours,

L. A. FOOT,

Attorney General.