

Oleomargarine—Licenses—Corporations.

A dealer in oleomargarine need not take out a license for each store when selling the commodity through several stores.

G. A. Norris, Esq.,
Chief of Dairy Division,
Helena, Montana.

August 8, 1925.

My dear Mr. Norris:

You have requested my opinion whether a corporation engaged in operating several stores in the state of Montana must pay a wholesaler's or a retailer's license under chapter 188, laws of 1925, for the sale of oleomargarine.

The fact that the corporation operates several stores at which it sells oleomargarine to the retail trade does not make the corporation a wholesaler because of the necessity of re-shipping this commodity from one store to another.

Hence, under the facts submitted by you it is my opinion that the Skaggs United Stores, incorporated, is a retailer and not a wholesaler within the meaning of chapter 188, laws of 1925.

You have also asked whether one license is sufficient or whether a license for each store is necessary.

The title to chapter 188 provides, in part, "An act requiring the licensing of dealers in oleomargarine."

Section 1 of the act provides:

"That it shall be unlawful for any person, firm or corporation, by himself, his or its servant or agent, or as the servant or agent of another, to sell, exchange, offer for sale or exchange, any oleomargarine, * * * without first securing a license * * * to conduct such sale or exchange."

The statute does not undertake to prescribe a license for any particular locality. Its provisions require the license from the person, firm or corporation conducting the business.

It comes within the principles announced and followed in the cases of:

Chevrolet Motor Co. vs. City of Atlanta (Ga.) 116 S. E. 287;

State ex rel. Collins vs. Grenada Cotton Compress Co. (Miss.)
85 So. 137;

Sperry & Hutchinson Co. vs. Harbison (Miss.) 86 So. 455;

Merchants Mutual Ins. Co. vs. Blandin, 24 La. Ann. 112;

and within the exception stated in 37 C. J. 210.

Under the above cited cases it was held that where the statute imposes the tax upon the person or corporation engaged in business rather than upon the business establishment or place of business only one license is required though the corporation may have several places of business.

This has also been the ruling of this department under substantially similar statutes as indicated in the following opinions:

Vol. 5 Opinions Attorney General, 66;

Vol 7 Opinions Attorney General, 72;

Vol. 1 Opinions Attorney General, 264.

It is, therefore, my opinion that under chapter 188, laws of 1925, a corporation doing business at several stores is obliged to take out only one license.

Very truly yours,

L. A. FOOT,

Attorney General.