

Oleomargarine—Licenses—Taxation—Dealers.

A dealer in oleomargarine who desires to operate a storage transfer station in Montana at which oleomargarine is kept to be handled in accordance with federal regulation No. 9, governing the sale of oleomargarine, must pay the license tax required by chapter 188, laws of 1925.

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

June 12, 1926.

My dear Mr. Norris:

You have requested my opinion whether Swift & Company may, without paying the oleomargarine dealers' license imposed by chapter 188, laws of 1925, handle oleomargarine through a storage transfer point at Butte, provided they conduct same in accordance with federal regulation No. 9, which reads as follows:

"Manufacturers of, and wholesale dealers in, oleomargarine may store tax-paid packages of such product at places other than those named in their special-tax stamps and may make deliveries from such places of storage without incurring additional special tax liability, provided that sales of oleomargarine so stored are absolutely completed by the manufacturers or wholesale dealers at their registered places of business by constructive delivery there prior to actual removal of the goods from the place of storage for delivery to purchasers. Receipt of an order at the place of business of a manufacturer or dealer and the sending of such order to the storage house for delivery is not a sale of goods at said place of business. A manufacturer or dealer must not merely receive the order at his place of business, but he must make out there and deliver to the customer ordering, or send to him direct a bill of sale in each instance transferring to him the ownership of the goods before there is an actual delivery from the place of storage. Manufacturers of, and wholesale dealers in, oleomargarine will not be permitted to store tax-paid packages of colored oleomargarine on the premises of a dealer who has not paid tax to sell the colored product."

Section 1 of chapter 188, supra, provides that it "shall be unlawful for any person or corporation * * * to sell, exchange, offer for sale or have in possession, with intent to sell, or offer for sale any oleomargarine" without securing license specified by the act. You will note that the act specifically prohibits not only the sale of oleomargarine but also having it in possession with intent to sell.

It is, therefore, my opinion that the operation of a storage transfer point for the storage of oleomargarine under the conditions specified in the above regulation constitutes having oleomargarine in possession in the state of Montana with intent to sell the same and that the main-

tenance of such a storage transfer point for the storage of oleomargarine comes within the provisions of chapter 188, supra, requiring the payment of an oleomargarine dealer's license.

Very truly yours,

L. A. FOOT,

Attorney General.