

Dairies—Licenses—Penalties—Creameries.

All dairies selling milk or cream are required to pay a license fee.

Dr. W. J. Butler,
State Veterinary Surgeon,
Helena, Montana.

December 28, 1928.

My dear Dr. Butler:

You have called my attention to an opinion rendered by former Attorney General Ford, appearing in Volume 8, Opinions of Attorney

General, p. 146, wherein it was held that all dairies must procure a dairy license, but that only dairies retailing milk or cream or both are required to pay the fee provided by Chapter 199, Laws of 1919. You desire to know whether this opinion still applies under the present laws.

In my opinion, the laws on this subject have been changed to such an extent that a different rule now obtains. Under Chapter 199, Laws of 1919 the fee was required from "dairies * * * retailing milk or cream."

By Chapter 262, Laws of 1921 (now Section 3282 R.C.M. 1921) the fee is required from "dairies * * * selling milk or cream or both." This is also the language used in Chapter 35, Laws of 1923.

In my opinion, under the laws now existing all dairies selling milk or cream must pay the fee required by Chapter 35, laws of 1923, and not those only that are retailing milk or cream as held in the opinion of former Attorney General Ford, above referred to.

You desire to know also whether there is any penalty for not taking out a license.

I think a dairy that fails to take out a license and to pay the fee is guilty of a misdemeanor under Section 3288 R.C.M. 1921. You state that it is your understanding that the license fee is a revenue measure rather than a health regulation. I think the penalty above provided applies irrespective of whether the measure is a revenue provision or a health regulation, but I am inclined to the view that the courts would declare Section 3282, as amended by Chapter 35, Laws of 1923, as a health measure rather than a revenue measure. I reach this conclusion because of the object to be attained by the legislation as well as from the language appearing in this section which authorizes the livestock sanitary board and the State Veterinary Surgeon to revoke a license whenever the licensee has failed "to conduct such an establishment in a sanitary manner."

You have also asked whether a constitutional statute could be enacted requiring all creameries to purchase milk or cream from duly licensed dairies only.

In 12 C. J. 1266 I find the following statement:

"Reasonable regulations prescribed under the authority of the state for the promotion of the public health are valid, even though they may have the effect of limiting the use or diminishing the value of private property, and the arrest of persons violating rules of the state board of health or other sanitary regulations is not a violation of any constitutional right."

I see no reason why the legislature may not enact such a statute providing that provision is made whereby a license may be obtained.

Very truly yours,
L. A. FOOT,
Attorney General.