

**Opinion No. 182.**

**Milk Control Board—Licenses—  
Annual License.**

**HELD:** The milk dealer's license is

an "annual" license and covers a period of twelve months—not merely a calendar year or the balance thereof.

October 5, 1935.

Mr. G. A. Norris  
Commissioner, Montana Milk Control  
Board  
The Capitol

You have submitted the question whether the annual license fee of \$10 collected by the Milk Control Board from milk dealers, is for the year 1935 or for twelve months. You advise that the Milk Control Board came into existence on June 4, 1935, and that three market areas were designated by the board on July 1, 1935, and that thereafter the dealers in such market areas were required to pay the annual license fee of \$10. While your letter does not so state, I presume that subsequent to that time other market areas have been established and other dealers required to pay the license fee of \$10.

Chapter 189, Laws of 1935, was approved March 16, 1935, and became effective upon approval. (Section 14.) Section 8 of the Act provides: "The board shall require all dealers in any market designated by said board to be licensed by said board." And Section 9 reads as follows: "\* \* \* The board shall collect from each licensed dealer an annual fee not to exceed \$10.00 for each dealer subdivision as defined above."

In *State ex rel. Carter v. Kall*, 53 Mont. 162, 166, 162 Pac. 385, it was said: "In the construction of a statute the primary duty of the court is to give effect to the intention of the legislature in enacting it. (*Lerch v. Missoula Brick & Tile Co.*, 45 Mont. 314, Ann. Cas 1914A, 346, 123 Pac. 25.) The intention is to be sought in the language employed and the apparent purpose to be subserved. (*Johnson v. Butte & Superior Copper Co.*, 41 Mont. 158, 48 L. R. A. (n. s.) 938, 108 Pac. 1057.)"

This quotation, I believe, expresses the rule generally in all jurisdictions. Except for the use of the word "annual" the legislature used no words to indicate its intention. The word "annual" is defined in Webster's dictionary as follows: "Of or pertaining

to a year; returning every year; coming or happening once in the year; yearly." It has also been defined as meaning every twelve months. (*State v. McCullough*, 3 Nev. 202, 224; 3 C. J. 195.)

No words were used by the legislature indicating an express or implied intention to collect a fee of \$10 for the calendar year of 1935. In the absence of such words, we are not at liberty to read them into the statute. On the other hand, the word "annual" as used in this Act would seem to mean every twelve months. This seems to be consistent with the purpose of the Act. It will be noted from Sections 8 and 9, supra, that the annual license fee is not collected from all milk dealers, but only from those dealers in any market designated by the board to be licensed by the board. Until a market area has been designated by the board, the dealers in that area are not required to pay license fee. The purpose of the fee is to pay for the expenses of administration of the Act. (Section 4.) The dealers in turn are protected by the enforcement of minimum prices.

Keeping in view the purpose of the legislature to provide the cost of operation under the Act from a collection of fees from those benefitted in the market areas which may be designated by the board, and that the market areas are not designated until the board takes action upon application made (Section 6), it is my opinion that the legislature intended to collect a license fee from the date of organization of the market, said fee to cover a period of twelve months and not merely for the calendar year or the balance thereof. I believe this is a just and equitable interpretation of the statute and in the absence of the intention of the legislature to exact a fee for the calendar year, the benefit of the doubt, if any, should be in line with such construction. I suggest, therefore, that the board, in future collections from dealers, make adjustments accordingly.