

No. 268

**DAIRY, defined—LICENSE, dairy—FARMER—
MILK—CREAM**

Held: When a farmer makes a business of selling milk and cream and/or other dairy products at his ranch as a regular means of support, his establishment most assuredly would be classified as a dairy.

October 20, 1941.

Dr. W. J. Butler
State Veterinary Surgeon
Livestock Sanitary Board
Helena, Montana

Dear Doctor Butler:

You have submitted the following:

"Where consumers take their own container and go to a farm or ranch and purchase milk at that farm or ranch, is that ranch to be considered a dairy, and is it subject to all of the rules and regulations of the Montana Livestock Sanitary Board governing the production and distribution of milk or cream even though they do not call themselves a dairy, and do not bottle milk or cream in their own containers?"

"If such a farm, in your opinion, is not a dairy would it be classified as a dairy if they bottle milk in their own containers or exchanged containers and sold it over the counter or delivered it to the consumer's residence?"

Section 3282 of the Revised Codes of Montana, 1935, among other things, provides:

"It shall be unlawful for the following classes of business to operate in the state of Montana without first securing a license from the livestock sanitary board, to-wit: 1. All dairies selling milk or cream for public consumption in the form in which it is originally produced and without having been converted into some manufactured product.

"The following schedule of license fees shall be charged for all licenses issued under the provisions of this section:

"Dairies of less than twenty cows, one dollar (\$1.00); Dairies of more than twenty cows, two and 50/100 dollars, (\$2.50)."

It would appear to me the answer to your questions is to be found within the definition of the words, i. e., dairy and establishment.

Webster's New International Dictionary defines dairy as "a place, as a room or building, where milk is kept and made into butter or cheese; the business of producing milk, butter and cheese; an establishment for the sale and distribution of milk or milk products." See also *State v. McCosh*, 136 Neb. 780, 784, 279 N. W. 775, 777.

Webster also defines establishment as "a permanent settled position in life, as in business; also, regular means of support."

In the light of the definitions given here, it could not very well be held a farmer keeping cows for family use and selling surplus milk and cream therefrom to his neighbor or neighbors for accommodation is operating a dairy. (See Attorney General's Opinions, Vol. 9, page 352; Vol. 10, page 16.) On the other hand if the farmer makes a business of selling milk and cream or other dairy products at his ranch as a regular means of support, his establishment would be classified as a dairy.

Therefore, it is my opinion a farmer who keeps cows for family use and sells the surplus products thereof to his neighbor or neighbors for accommodation is not to be considered as operating a dairy. However,

when a farmer makes a business of selling milk and cream or other dairy products at his ranch as a regular means of support, his establishment most assuredly would be classified as a dairy.

Sincerely yours,

JOHN W. BONNER
Attorney General