

No. 328

LICENSING—PUBLIC EATING PLACES—BAKERIES—
CONFECTIONERIES—MEAT MARKETS—CANNERIES—
ICE CREAM PARLORS—SOFT DRINK ESTABLISH-
MENTS—BOTTLING WORKS—STATE BOARD OF
HEALTH

Held: Under Section 2589, Revised Codes of Montana, 1935, it is required that any person, persons, firm or corporation conducting any business therein named shall procure a separate license from the State Board of Health for each such business conducted, excepting only that no license shall be required for a dining room, cafe or lunch counter operator in connection with and under the same management as a hotel which holds a license from the State Board of Health or which is subject to payment of a license fee under Sections 2485 to 2498, Revised Codes of Montana, 1935.

December 31, 1941.

Dr. W. F. Cogswell, Secretary
State Board of Health
Helena, Montana

Dear Doctor Cogswell:

You have submitted the following:

“Will you kindly render an opinion of the intent of Section 2589, Revised Codes of Montana, 1935, as to whether a license is required of an establishment for each class of business listed in said Section 2589?”

In answering your inquiry, I will quote the title to Chapter 175, Laws of 1921, which is now Section 2589, Revised Codes of Montana, 1935:

"An Act to Amend Section 10, Chapter 130, Session Laws of 1911, Providing for the Licensing of Public Eating Places, Bakeries, Confectioneries, Meat Markets, Canneries, Ice Cream Parlors, Soft Drink Establishments and Bottling Works, and Regulating Fees to be Charged for Said Licenses."

The pertinent part of said Section 2589, Revised Codes of Montana, 1935, is as follows:

"It shall be unlawful for any person, persons, firm or corporation to conduct any restaurant, cafe, lunch counter, dining car, manufacturing bakery, manufacturing confectionery, meat market, cannery, soda fountain, ice cream parlor, soft drink establishment or bottling works, without having a license issued by the state board of health of Montana; provided, that no license shall be required for a dining room, cafe or lunch counter that is operated in connection with and under the same management as a hotel that holds a license from the state board of health, or that is subject to the payment of a license fee under the provisions of chapter 36, session laws of 1919, an annual fee of two dollars (\$2.00) shall be required for each license."

It will be noted that, in the title as well as in the body of the act, each business is set out separately. In other words, the legislature has stated it shall be unlawful for any person to conduct any one of the businesses mentioned in said section without having a license issued by the State Board of Health of Montana for the particular business so operated, and an annual fee of two dollars shall be required for each license.

There is only one exception and that is that no license shall be required for a dining room, cafe or lunch counter which is operated in connection with and under the same management as a hotel which holds a license from the State Board of Health, or which is subject to the payment of a license fee under the provisions of Sections 2485-2498, Revised Codes of Montana, 1935.

It appears the intent of the legislature was to require a separate license for each of the businesses set forth in Section 2589, Revised Codes of Montana, 1935. It could not be maintained a person conducting a meat market at one location, a manufacturing confectionery establishment at another location, and a soda fountain at still another location would not be required to furnish a separate license for each such business. So, if the same person consolidated his meat market, manufacturing confectionery establishment and soda fountain in the same building, would he then be relieved from procuring a license for any of his said businesses? I think not, for the license tax must be uniform upon the same class of subjects.

Section 1, Article XII, of our Constitution provides in part:

"The legislative assembly may also impose a license tax, both upon persons and upon corporations doing business in the state."

And Section 11, Article XII, provides:

"Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

Our Supreme Court in commenting on a similar question has stated:

"There is no more reason for exempting defendant from the payment of a dealer's license tax for the privilege of engaging in the business of operating service stations, because it manufactures the gasoline it sells, when a tax is exacted from others engaged in the like business, than there would be to hold that a manufacturer of soft drinks who pays the license tax required by Section 2436, Revised

Codes of 1921, is exempt from paying the license tax imposed by Section 2589, Id., upon those who operate 'soft drink establishments,' because he sells his manufactured products in such an establishment, operated likewise as an independent venture. In each instance, in theory at least, there is a wholesale and a retail license, or occupation, tax, imposed on each of those engaging in the business described, each independent of the other."

State v. Yale Oil Corporation of South Dakota, 88 Mont. 506, 295 Pac. 255.

It may develop quite often that, where the same person or persons, firm or corporation are conducting in the same business establishment two or more of the said businesses requiring a separate license therefor, the Secretary of the State Board of Health may cancel any one of said licenses without in any way affecting the other license or licenses. That is, upon an inspection of the property of the above mentioned owner and operator of a meat market, manufacturing confectionery and soda fountain, by the representative of the State Board of Health, it might be found the meat market was not being conducted in compliance with the rules and regulations of the State Board of Health, but that the manufacturing confectionery and soda fountain were in all respects being conducted in conformity with such rules and regulations. Under such circumstances, the Secretary of the State Board of Health may cancel the license for the meat market without affecting the license for the manufacturing confectionery or the license for the soda fountain.

It is therefore my opinion that, in order for any person, persons, firm or corporation to conduct lawfully any of the businesses named in Section 2589, Revised Codes of Montana, 1935, he or they shall have a license issued by the State Board of Health, for such business. Where the same person conducts more than one such business as is named in Section 2589, Revised Codes of Montana, 1935, a separate license is required for each such business. The Secretary of the State Board of Health may cancel any one of said licenses without affecting the other license or licenses. It is to be noted no license shall be required for a dining room, cafe or lunch counter which is operated in connection with and under the same management as a hotel which holds a license from the State Board of Health, or which is subject to the payment of a license fee under the provisions of Chapter 36, Laws of 1919 (now Sections 2485-2498, Revised Codes of Montana, 1935).

Sincerely yours,

JOHN W. BONNER
Attorney General