

No. 411

LICENSES—MUSTARD SEED

Held: One who buys and sells mustard seed, but who does not contract in advance for the purchase thereof or who does not store said seed for the grower, is not required to obtain a license or furnish a bond under Section 3592.69, Revised Codes of Montana, 1935.

May 11, 1942.

Mr. Albert H. Kruse
Commissioner
Agriculture, Labor & Industry
State Capitol

Dear Mr. Kruse:

You have requested my opinion whether a dealer in mustard seed is required to obtain a license or furnish a surety bond. You advise the dealer in question is neither storing nor contracting with the grower for the purchase or production of the seed.

Section 1, Chapter 64, Laws of 1939, provides:

"All persons, firms, co-partnerships, corporations and associations engaging in the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of said crop or crops, shall, on or before the first day of March of each year, pay to the state treasurer of Montana a license fee in the sum of ten dollars (\$10.00) for the privilege of carrying on such business, and

shall on or before said first day of March of each year, give a bond with good and sufficient sureties approved by the commissioner of agriculture of the State of Montana, in such sum as the Commissioner may require but not less than ten thousand dollars (\$10,000.00) conditioned upon the payment for such contracted seed at the price or prices specified in such contract, and upon the payment of such license fee of ten dollars (\$10.00) and upon the approval of such bond by the commissioner of agriculture, said commissioner shall issue to such persons, firm, co-partnership, corporation or association a license to engage in such business in the State of Montana for a period of one year"

A license is a privilege conferred upon a person to carry on a certain business or occupation. (33 Am. Jur. 325). The business or occupation for which the license in this instance is required is defined in the statute as "the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of said crop or crops." The business for which a license under this statute is required, therefore, must come within the definition of the statute. Under the facts given in this instance, the dealer in question, is not "contracting in advance of harvesting for the purchase of mustard seed crops" and therefore does not come within the definition.

It is obvious the purpose of this statute is the protection of growers of mustard seed. This purpose is expressed in the provision requiring the giving of bond "conditioned upon the payment for such contracted seed at the price or prices specified in such contract." Here the dealer does not purchase or contract for the purchase of the seed—and, hence, there is no necessity for a bond.

It is therefore my opinion one who buys and sells mustard seed, but who does not contract in advance for the purchase thereof or who does not store said seed for the grower, is not required to obtain a license, or furnish a bond under Section 3592.69, Revised Codes of Montana, 1935.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General