

Held: Under the holding in the Glacier Park case, supra, that Chapter 49, Laws of 1939, is not applicable to stores within Glacier National Park.

May 14, 1947

State Board of Food Distributors
P. O. Box 198
Helena, Montana

Gentlemen:

You have requested my opinion as to the applicability of the provisions of Chapter 49, Laws of 1939, to the stores located within the boundaries of Glacier National Park.

Chapter 49 of the Laws of 1939, provides for the creation of a board of food distributors consisting of five members, and sets the terms of office of each member. Under Section 6 of the Act the powers and duties of the board are defined, and among these powers are the following:

“(a) To regulate the quality of all food sold at retail in this State, using the State and Federal Pure Food and Drug Acts as the standard.

“(b) It may, by its duly authorized representative, enter and inspect and all places where food is sold, vended, given away, or manufactured. It shall be unlawful for any person to refuse to permit or otherwise prevent such representative from entering such places and making such inspection.

“(f) For the purposes aforesaid, it shall also be the duty of the board to make and publish uniform rules and regulations not inconsistent herewith, for carrying out and enforcing the provisions of the act.”

Under Section 10 of the Act every store which comes within the definition of food store is required to take out a license and pay a fee of \$2.00 annually. The Act further requires that the license shall be at all times displayed in a conspicuous place in the store.

Opinion No. 33

**Board of Food Distributors—Stores,
Glacier National Park—License Fees.**

Under Section 12 of the Act it is provided that every proprietor or

manager of the food store shall be responsible for the quality of the food sold and it shall be unlawful for any person to adulterate or mix any foreign or inert substance with such food for the purpose of adulteration or cheapening the same.

In the case of *State ex rel State Board of Equalization vs. Glacier Park Co.*, 164 Pac. (2d) 366, the Supreme Court had under consideration the provisions of Chapter 163 of the Laws of 1939, known as the chain store license tax act as applied to stores within Glacier National Park. In that case, after reviewing the provisions of Chapter 163 in the light of the holding of the United States Supreme Court in the case of *Collins v. Yosemite Park and Curry Company*, 304 U. S. 518, the Court held where the state grants exclusive right of governing of a national park to the federal government but reserves unto itself the right of taxation, that the regulatory provisions of Chapter 163 were not enforceable but the taxing provision, being independent of any licensing or regulatory provision of the Act, was enforceable as a tax or a revenue measure.

The Court in the course of its opinion said:

"In other words, the court held that taxing provisions of the Act which were 'independent of any licensing or regulatory provisions of the Act, and may be enforced independently' were enforceable as a tax or revenue measure but that the license provisions could not 'be treated as separable from regulations applicable to those licensed,' so as to be enforced separately. It follows that if, like the excise taxes, the license taxes had been independent of regulatory provisions, so as to be susceptible of separate application, those taxes also would have been held enforceable in Yosemite Park.

"(3) In Chapter 163 there are no 'regulatory provisions.' Furthermore, there are no 'regulations applicable to those licensed' except provisions not regulatory in nature but merely an aid to the collection of license taxes, including the re-

quirements for the display of the license (section 3), for annual renewal applications (section 4), and for penalties for violations of the Act (section 11). We find no such provisions as in the California Act, either limiting those to whom licenses may be issued or regulating the conduct of their businesses. Licenses are required to be issued to all who apply and pay the license fees therefor. Not being dependent upon any 'regulatory provisions' or any 'regulations applicable to those licensed,' the taxes imposed by Chapter 163 are valid taxes and applicable, as such, with regard to stores maintained in Glacier National Park."

Chapter 49, Laws of 1939, is purely a regulatory measure, and the license fees therein provided for are not separable from the regulatory provisions, but are dependent thereon.

It is, therefore, my opinion—under the holding in the Glacier Park case, supra—that Chapter 49, Laws of 1939, is not applicable to stores within Glacier National Park.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General