

Opinion No. 90**Certificates of Registration—Licenses—Apiculture—Bees.**

Held: 1. A Certificate of Registration issued to an owner or possessor of an apiary may not be legally transferred or sold. Such Certificate is a license issued by the State of Montana and is a personal right of the holder thereof.

February 9th, 1950.

Mr. J. H. Pepper
State Entomologist
Bozeman, Montana

Dear Mr. Pepper:

You have requested my opinion as follows:

"This office would like to have you write an opinion as to whether, under Montana's present Apiculture Law, a registered apiary location can be legally transferred or sold. For example, when bees and equipment are transferred through sale, gift, trade, or in any other way, does the right to the registered location upon

which the bees were situated at the time of such transfer remain with the person under whose name the bees and location were registered at the time of the transfer, or is the right to the location transferred along with the transfer of the ownership of the bees?"

The statutory provisions relating to apiculture are contained in Sections 82-805 through 82-814, Revised Codes of Montana, 1947. Section 82-807, Revised Codes of Montana, 1947, provides that it shall be unlawful to possess or own an apiary in the State of Montana without registering the same with the State Apiarist. It further provides that registration blanks shall contain a statement of the name, place of residence, and place of business of the owner together with the number of colonies of bees, hives and equipment in such apiary and the location of such apiary. Upon receipt of such registration blank the State Apiarist is authorized to issue a certificate of Registration for the apiary providing that in issuing certificates of registration for apiaries established and registered as now provided by law, if there is a conflict between applicants with respect to location, the State Apiarist shall give preference to the applicant having the oldest continuous established location.

It is to be understood of course that the party seeking to register an apiary must either be the owner in fee of the land whereon the bees and equipment are to be located or else must have leased, rented or made other arrangements with the owner thereof to permit him to use such property to maintain an apiary. The Certificate of Registration issued by the State Apiarist does not grant the physical possession of any location to the applicant, it only certifies that such location may be utilized for the purpose of keeping bees after it has been determined that bees maintained thereon will not be in such close proximity to established registered apiaries that there is or may be danger of spread of disease, or that such proximity will not interfere with the proper feeding and honey flow of such established apiaries.

In deciding whether a registered apiary location can be transferred or sold it is necessary to determine what is the nature of a Certificate of Registration. As defined in *Standard Oil Co. v. State Board of Equalization*, 110 Mont. 5, 99 Pac. (2d) 229, the word license has the following meaning:

"The tax imposed under that view of the facts is clearly a license under any definition, and not a tax on real property. It comes within the ordinary definition which is found in 37 C. J., at page 166: The term 'license' is not involved in uncertainty or doubt; in its general and popular sense, as used with reference to occupations and privileges, it means a right or permission granted by some competent authority to carry on a business or do an act which, without such license would be illegal. It is a formal or official permit or permission to carry on some business or do some act which, without the license, would be unlawful the words 'license' and 'permit' often being used synonymously. It has also been

defined as the granting of a special privilege to one or more persons, not enjoyed by citizens generally, or, at least, not by a class to which the licensee belongs."

In view of the above quoted language it would seem to be at once apparent that a Certificate of Registration for an apiary is in essence a license to engage in the business of apiculture.

Considering a Certificate of Registration as a license it becomes necessary to determine whether or not a license may be transferred or sold. The general rule on transferability of license is that a license cannot be transferred without the consent of the licensing authorities unless the license statute or ordinance provides otherwise. 53 C.J.S., Licenses, Section 45, Page 657. *Deggendor v. Seattle Brewing & Malt-ing Co.*, 41 Wash. 385, 83 Pac. 898, 4 L.R.A., N.S. 626. There is nothing in Section 82-807, supra, or any of the other statutes relating to the regulation of apiaries that would take Certificates of Registration out of the general rule stated above. The Act specifically states that it shall be unlawful for any person, firm, or corporation to possess or own an apiary without registering the same. This provision points out that the Certificate granted is a personal right, and that one individual cannot operate under the license, that is, Certificate of Registration, granted to a previous owner of an apiary.

To more specifically answer your question as to whether the right to the registered location belongs to the person to whom the bees were sold or to the person who sold the bees, it is my view that such location belongs to neither party insofar as the license or Certificate of Registration from the State of Montana is concerned. The party who has sold his apiary can no longer claim any interest in the Certificate of Registration since he has parted with the property which he had registered. The party who purchased the bees has no claim to the location he makes application for until he receives a Certificate of Registration from the State Apiarist. In other words when the bees and equipment are transferred the existing Certificate of Registration expires and the law contemplates that a new Certificate of Registration be applied for. In granting such Certificate the State Apiarist should give preference to the party presenting the earliest application providing he possesses the bees and equipment and the right to immediate possession of the property for which the Certificate is to be issued.

Nothing in this opinion shall in any way apply to or affect those Certificates of Registration issued for apiaries that are temporarily vacated for a portion of each year due to the exigencies of climatic conditions. Such Certificates shall remain in full force and effect.

Therefore, it is my opinion, that under the provisions of the Montana statutes relating to the regulations of Apiculture a registered apiary location cannot be legally transferred or sold.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.