

163.

LICENSES—LICENSEES MAY USE DIFFERENT NAMES IN DIFFERENT LOCALITIES—SECTIONS 1177-60 TO 1177-70, GENERAL CODE, CONSTRUED.

SYLLABUS:

A person duly licensed under the provisions of Sections 1177-60 to 1177-70 of the General Code, both inclusive, to engage in the business of disposing of the bodies of dead animals, may advertise in the telephone directories and local papers in other localities under a trade name or names and thus solicit business for his plant without again filing an application for a license to engage in such business under such trade name and paying an additional license fee therefor.

COLUMBUS, OHIO, March 10, 1927.

Department of Agriculture, Division of Feed and Fertilizer, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter of March 4th, which reads as follows:

“This office has ruled that in case a license certificate has been issued to John Doe, Columbus, Ohio, permitting him to engage in the business of disposing of the bodies of dead animals that he cannot advertise in the telephone directory or in the local papers in another location and operate under the name of the Marion Fertilizer Company, or the Delaware Fertilizer Company, without first filing application for registration and paying the additional license fee.

Our ruling is questioned and we would be pleased for your opinion. Sections 1177-60 to 1177-70.”

You further inform me that John Doe has only the one plant located in Columbus and any business he obtains in other communities he disposes of in his Columbus plant.

The question that presents itself is whether or not John Doe, having been licensed under the provisions of Sections 1177-60 to 1177-70 of the General Code to engage in the business of disposing of the bodies of dead animals and whose place of business is located in Columbus, Ohio, may advertise in the telephone directory or local papers in another location and operate under the name of the Marion Fertilizer Company, or the Delaware Fertilizer Company without first filing an application for registration under said names and paying an additional license fee therefor?

Sections 1177-60 to 1177-70 of the General Code, to which you refer, were passed April 8th, 1919, as an act entitled:

“To prevent the spread of hog cholera and other diseases, regulating the business of disposing of the bodies of dead animals by the process of burying, burning or cooking; providing for the issuance of licenses to persons, firms or corporations, permitting them to follow such business; providing for the inspection of plants where such business is carried on, providing for the violation of any of its provisions.”

The sections of the General Code pertinent to your inquiry are Sections 1177-60 to 1177-65, inclusive.

Section 1177-60 provides in part:

“That any person, firm or corporation desiring to engage in the business of disposing of the bodies of dead animals, by burying, burning, or cooking; and any person, firm or corporation in such business and desiring to continue same, shall first procure from the secretary of agriculture a license to do so.
* * * ”

Section 1177-61 provides who shall be deemed to be engaged in said business and subject to the provisions and penalties of the act, and to whom said act does not apply.

Section 1177-62, provides:

“Any person, firm or corporation desiring a license to engage in such business shall file an application for such license with the secretary of agriculture. Such applicant, at the time he files such application shall pay to the secretary of agriculture a fee of \$50.00. In case more than one inspection of the premises of said applicant is necessary as hereinafter provided the applicant shall pay a further fee of \$25.00 for each such inspection before the license shall be issued.”

Section 1177-63 provides:

“Immediately after the filing of said application the secretary of agriculture shall cause the premises, where such applicant desires to conduct such business, to be inspected. If the secretary of agriculture shall find such applicant is a responsible person, firm or corporation, and that the rules and regulations of the secretary of agriculture as hereinafter provided have been complied with, he shall issue a license to such applicant.

If said secretary of agriculture shall find that such rules and regulations have not been complied with, he shall notify the applicant of that fact and shall specify in writing the changes that must be made before such license will be issued.

Upon request of the applicant and payment by him of the additional fee provided for in Section 3 the secretary of Agriculture shall cause a second inspection to be made and such proceedings shall be had as in the case of the first inspection.”

Section 1177-64 provides for the publication of reasonable rules and regulations for the carrying on of such business and for the physical and sanitary conditions of the premises and equipment.

Section 1177-65 provides that:

“The secretary of agriculture, in person or by deputy, shall inspect or cause to be inspected each place licensed under this act at least once each year, and as often as the secretary of agriculture may require, and shall see that the licensee conducts the business in conformity to this act and other rules and regulations made and established by the secretary of agriculture.
* * * ”

The object of a statute requiring such a license as here involved is to regulate

and control the occupation or privilege for which the license is granted, so as to subserve the public good or prevent its being conducted in a manner injurious to the public welfare.

As defined in 37 Corpus Juris, 166, the term "license" means

"A right or permission granted by some competent authority to carry on a business or to do an act which, without such license, would be illegal."

In the case that you present John Doe made application under Section 1177-62, supra, for a license to engage in the business described in your letter. The Secretary of agriculture, as provided in Section 1177-63, supra, found him to be a responsible person and upon inspection of the premises where he desired to conduct said business found that he had complied with the rules and regulations of the secretary of agriculture. John Doe was thereupon granted a license to engage in the business of disposing of the bodies of dead animals. Said licensee has the right to engage in the business in question until his license expires, so long as he conducts his business in conformity to the provisions of this act.

An examination of the act under discussion clearly shows that it was the intent of the legislature that the kind of business named in the act should be carried on to subserve the public good and in such a manner that it not be injurious to the welfare of the public. The purpose of the act is to provide for *an inspection of the place where the business is conducted rather than to require a fee from the person who conducts it*. The only requirement in so far as the person, firm or corporation who engages in this type of business is concerned is that the applicant be "responsible." The provisions of the act are directed toward the place where and the manner in which such a business is conducted. The fee that the applicant pays is an "inspection fee" to compensate the state for its inspection of the premises. In case more than one inspection of the premises be necessary, Section 1177-62, supra, provides for a further fee of twenty-five dollars for each such additional inspection until the premises, where such applicant desires to conduct said business, are maintained in accordance with the rule and regulations of the secretary of agriculture.

An examination of the rules and regulations of the secretary of agriculture, as provided by Section 1177-64, supra, shows that they are "Rules for Regulation of Reduction plants;" "How the Plant shall be Constructed;" "How the Carcasses shall be Disposed of;" "How the Plant shall be Cared for and how Carriers Used shall be Constructed."

Section 1177-65, supra, provides for at least one annual inspection of *each place licensed* under this act and as often as the secretary of agriculture may require to see that the licensee conducts the business in conformity to the act of which it is a part and the rules and regulations of the secretary of agriculture.

It is a well established principle of law that if there be no statutory inhibition a person has the right to change his name and adopt or assume any name he sees fit. In order to transact business a person may assume even a firm or trade name and make valid contracts thereunder, so long as the business is conducted in good faith. If for business reasons a person deems it advantageous to solicit trade under a name other than his own he may adopt or assume such other name even though it be a trade or firm name, provided of course, such name be taken in good faith and with no fraudulent or criminal intent. *All that the law looks to is the identity of the individual so engaged in business.*

It is my opinion that in the case which you present no statute precludes John Doe from soliciting business under the name of the Marion Fertilizer Company or the Delaware Fertilizer Company. He may advertise in the telephone directories or newspapers in other localities under such adopted or assumed names without

again filing an application for a license to engage in such business and paying an additional license fee therefor. The law will look to the identity of the individual who is transacting such business rather than to the style of the name adopted and assumed.

I suggest that you amend your ruling in accordance with the views herein expressed.

Respectfully,
EDWARD C. TURNER,
Attorney General.

164.

DIRECTOR OF HIGHWAYS—CONSTRUCTION OF CERTAIN CONTRACTS
—BOUND BY KNOWLEDGE OF AUTHORIZED AGENT.

SYLLABUS:

1. *Where the owner of lands desired by the state for highway purposes delivered a deed therefor to a duly authorized and acting agent of the state empowered to negotiate for the purchase of the required right of way, with the express stipulation that such deed should remain in the personal possession of such agent, until the Department of Highways and Public Works should execute and deliver an unconditional agreement to build a retaining wall, knowledge by the agent of the terms and conditions of such stipulation is knowledge by the state, and upon the state's taking possession of said lands and constructing a highway thereon, it is legally bound to build the retaining wall as stipulated by the owner.*

COLUMBUS, OHIO, March 10, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date which reads as follows:

“Re: Property damage and retaining wall, C. B. W. property, I. C. H. No. 47, Granville township, Licking county, Ohio.

Submitted herewith for your advice is a copy of a letter to the Director of Highways from Mr. W. and a copy of the agreement upon the part of the Department relative to the above. The facts so far as the Department is concerned are briefly as follows:

In August, 1926, Mr. T., county surveyor of Licking county, acting in the capacity of resident engineer for the state, negotiated with Mr. W. of Granville for 0.14 acres of land needed to widen a curve on inter-county highway No. 47 at the east edge of Granville.

The sum of \$150.00 was agreed upon for compensation and damages for the land. Mr. W. states that Mr. T. agreed to build a retaining wall in front of his property as part of the agreement. Mr. T. states ‘that he agreed to the \$150.00 compensation and damages and promised to hold in his personal possession, the signed deed to 0.14 acres until such a time as the state gave Mr. W. an agreement in connection with the wall.’ Mr. T. does not say whether he promised the wall or not. His statement is as quoted above.