

980.

AGRICULTURE—WORD "PERSON" USED IN SECTION 5805-1 G. C. DEFINED—"SEED MERCHANT" USED IN SECTION 5805-6 G. C. CONSTRUED—WHERE ASSOCIATION PURCHASES AND SELLS AGRICULTURE SEEDS TO ITS MEMBERS, SUBSECTION B, SECTION 5805-6 G. C. APPLICABLE.

- 1 *The word "person" used in section 5805-1 G. C. includes all natural persons.*
- 2 *The term "seed merchant," used in section 5805-6, means one who traffics or carries on a trade in seeds; one who buys agricultural seeds to sell again; one who is engaged in the purchase and sale of such seeds.*
- 3 *Where an association purchases and sells agricultural seeds to its members, such association is a seed merchant within the meaning of subsection B, section 5805-6 G. C.*

COLUMBUS, OHIO, February 3, 1920

*Department of Agriculture, Bureau of Feeds and Fertilizers, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is made of the receipt of your recent letter containing a copy of a communication from S. W. F. Company, reading as follows:

"We ask you as a favor if you will answer a few questions for our information We would like to have the word 'person' as read in section 13, line 2, defined. We would also like to have the two words 'seed merchants' as read in section 6-B defined.

We would also like to know if a combination or association of farmers who may call their society a Grange or any other name they see fit (who purchase their own supplies of seed through one of their own number who in turn distributes same), would be classed as 'seed merchants,' or should the particular person handling the transaction for them be classed as a seed merchant.

After we receive your reply to these questions, we will have some more questions to ask If you do not care to render an opinion on these, please turn same over to the attorney-general so we will have something to work on."

It is learned that you desire the opinion of this department on the questions therein stated.

The first part of the letter requests the definition of the word "person" as contained in section 13, in amended senate bill No 11, 108 O L, 52 (now section 5805-13), and the term "seed merchants" as contained in section 6-b of that act (now section 5805-6) Section 5805-1 in part provides:

"Before any person, firm, company or corporation shall sell, offer for sale, or expose for sale in this state any of the agricultural seeds," and

except such as are exempt, he or they shall pay a certain license fee. The word "person" may include both natural and artificial beings, such as corporations or associations whether or not the word "person" as used in a legislative act includes artificial persons depends upon the terms and construction of each act. See *Scribbling vs Bank*, 5 Rand (Va.) 132. See also *Bouviere's Law Dictionary*, 2574.

The term "person" as used in this section, however, does not include partnerships or corporations, as those artificial persons are specifically mentioned in the section from which it is concluded that the term "person" means and includes all natural persons.

It is noted that the question is also asked:

"If a combination or association of farmers who may call their society a grange or any other name they see fit (who purchase their own supplies of seed through one of their own number who in turn distributes same), would be classed as seed merchants, or should the particular person handling the transaction for them be classed as a seed merchant?"

In response to a request for a more definite statement, your supplemental letter, quoting your correspondent, states:

"Number 2. You might answer the question both ways, that is as you separate it:

'1st The grange or society becomes the owner of the seeds and actually sells them to its members or other persons.'

'2nd It merely acts as a purchasing and distributing agent for each of the members without acquiring any title of the seeds so purchased and distributed.'

Please note we would like to have the answer covering also the condition that the purchase might be made by the grange as a body through their constituted officers, or the purchase might be made by a member of the grange not an officer but who has been authorized to act for them."

Your letters are understood, so far as this question is involved, to inquire if the given facts would constitute the "grange or society," referred to therein, as seed merchants within the meaning of subsection 3 of section 5805-6 G. C. This section in part provides:

"Agricultural seeds or mixtures of the same shall be exempt from the provisions of this act. \* \* \*

(b) When sold direct to seed merchants \* \* \*"

The first sentence of this section, above quoted, has been construed by this department in another opinion to your department to mean that such seeds are exempt from the labeling requirements of the act, but are not exempt from the license fee requirements of section 5805-15. In the case presented by your letters, the questions are:

(1) Whether an association, which you describe as a "grange or society," acting (a) as an association, or (b) through an agent, purchases agricultural seeds and sells them to its members, is classed as a "seed merchant," and

(2) Whether the association, acting merely as a purchasing and distributing agent, so purchasing and distributing such seeds to its members without acquiring any title to the seeds, thereby becomes such a seed merchant.

This last question may be answered by the statement that if the association acquires no title, it can sell nothing and that in fact no sale to its members is made by the association, and it would not be liable under the law, as the labeling and license requirements operate on seeds "sold, offered or exposed for sale," as provided in sections 5805-4, 5805-5 and 5805-13.

Where, however, the association, or agent for the association, or its members in fact becomes the owner of such seeds, a different result obtains, and the question then is, does this make such association or agent a seed merchant. Your statement does not indicate how many members would thus become customers of the association or persons, and consequently the extent and volume of the seed business is uncertain, and it may be supposed that in such cases the seed business may not be the exclusive or main business of such association or person.

This brings us to the question of the meaning of the term "seed merchants" as used in section 5805-6.

Webster defines a merchant as follows:

"One who traffics or carries on a trade, especially on a large scale; one who buys goods to sell again; any one who is engaged in the purchase and sale of goods; a trafficker; a trader."

Adapting this common acceptation of the word "merchant" to the term "seed merchant," it may be observed ordinarily that seed merchant is one who trafficks or carries on a trade in seeds; one who buys agricultural seeds to sell again; one who is engaged in the purchase or sale of such seeds, and such a society or person buying or selling seeds, it would seem, must be deemed a seed merchant unless it can be said that the legislature intended by this term to include only those who are engaged exclusively in the seed business or whose seed business is with the public generally instead of being limited to the members of the association. To hold that such a seed merchant must be thus exclusively engaged and deal with all the public to come within the meaning of this term, as used here, would be to impute to the legislature an intention to use this term in a special sense. The proper rule of construction in such cases, as stated in *State ex rel. vs. Bish*, 12 O. N. P. (n. s.) 369, is that words and phrases used in statutes are to be taken in their plain, ordinary sense unless the statute clearly indicates that they were used in a special or restricted sense, or unless they are technical words or phrases, in which case they are construed according to their technical meaning.

In the section under discussion there is nothing to indicate that the legislature used this term in a special sense, and consistent with the authorities above referred to, it is concluded that where an association purchases and sells agricultural seeds to its members, such association is a seed merchant within the meaning of subsection b, section 5805-6 G. C.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

981.

BOARD OF HEALTH—WHERE HEALTH COMMISSIONER ATTENDS  
CONVENTION OF AMERICAN HEALTH ASSOCIATION AT NEW  
ORLEANS—NO STATUTORY AUTHORITY TO PAY EXPENSES FROM  
PUBLIC FUNDS.

*There is no statutory authority for using public funds to pay expenses incurred by health commissioner of Canton board of health in attending the convention of the American health association held at New Orleans, in October, 1919.*

COLUMBUS, OHIO, February 3, 1920.

*The Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date inquiring whether expenses incurred by the health commissioner of the Canton board of health in attending the convention of the American public health association at New Orleans on October 19, 1919, are a legal charge against public funds, was duly received.