

OPINION NO. 65-171**Syllabus:**

1. All sellers of livestock, residents or non-residents, are required to be licensed if they are "dealers" or "brokers" except those who do not come within any of the exclusionary provisions of paragraph (C), including subparagraphs (1), (2), (3) and (4) of Section 943.01, Revised Code.

2. The determination of whether or not a seller is excused from obtaining a license is to be determined from the facts by the Department of Agriculture.

3. The General Assembly has not excepted non-

residents from obtaining a license, therefore, non-residency is not a criteria to be considered in excusing a seller from obtaining a license.

To: John M. Stackhouse, Director Department of Agriculture, Columbus, Ohio
By: William B. Saxbe, Attorney General, September 23, 1965

I have before me your request for my opinion which reads as follows:

"At the present time certain non-residents of Ohio, neither farmers nor railroads, are bringing livestock into the state for sale at various auction markets throughout the state.

"We feel Chapter 943, of the Revised Code, (Livestock Dealers Law) requires these people to obtain a license before they may sell their livestock, but we have encountered considerable opposition in our efforts to make these people obtain the license.

"The people effected (sic) feel that the law is aimed only at buyers of livestock and, even if it would apply to them, we should make exceptions to the law. We feel that we can not make exceptions from the requirements set forth in the Revised Code, but these people believe we are not making exceptions just to harrass them.

"We respectfully request an opinion from your office as to whether sellers of livestock, resident or non-resident, are required to be licensed."

Your attention is invited to Sections 943.01 and 943.02, Revised Code. Section 943.01, supra, reads as follows:

"As used in sections 943.01 to 943.17, inclusive, of the Revised Code:

"(A) 'Animals' or 'livestock' includes horses, mules, cattle, calves, swine, sheep, or goats.

"(B) 'Person' means any person, partnership, association, or corporation.

"(C) 'Dealer' or 'broker' means

any person found by the department of agriculture buying, receiving, selling, slaughtering, exchanging, negotiating, or soliciting sale, resale, exchange, or transfer of any animals in an amount of more than one hundred head of cattle or horses, or two hundred head of feeder cattle or calves, or three hundred head of sheep or swine during any one year; but does not mean:

"(1) Any railroad or other carrier transporting animals either interstate or intrastate;

"(2) Any person who by dispersal sale is permanently discontinuing the business of farming, dairying, breeding, raising, or feeding animals;

"(3) Any person who sells livestock which has been raised from birth on the premises of such person;

"(4) Any person who buys or receives animals for grazing or feeding purposes and sells or disposes of such animals after the grazing or feeding period for immediate slaughter.

"(D) 'Agent' means any person buying, receiving, soliciting, or negotiating the sale, resale, exchange, or transfer of animals for or in behalf of any dealer or broker.
(Emphasis added)

Section 943.02, supra, reads as follows:

"No person shall act as a dealer or broker without first being licensed. No agent shall act for any dealer or broker unless such dealer or broker is licensed, and has designated such agent to act in his behalf and has notified the department of agriculture in his application for license, or has given official notice in writing of the appointment of such agent and requested the department to issue to such agent an agent's license. Such dealer or broker shall be accountable and responsible for contracts made by said agent in the course of his employment. The license of an agent whose services are terminated by or with the dealer or broker is void and on the date such written notice of termination is received by the department. An agent's license, unless revoked, shall expire on the thirty-first day of March of each year."

The provisions of Section 943.02, supra, are mandatory; it is required that every agent or dealer must be licensed and does not provide for any exceptions or exemptions. This section does not allow the Director of Agriculture to exercise his discretion as to who shall or shall not obtain a license. There is no exception or exemption in Section 943.02, supra, for non-residents. The General Assembly did not differentiate between residents of Ohio and non-residents; therefore, it is my opinion that under Section 943.02, supra, a non-resident dealer or agent is required to obtain a license.

However, we must also look to Section 943.01, supra, to determine if the persons mentioned in your request for my opinion are dealers who must obtain a license or if they are persons who by definition are not dealers.

The exclusionary or non-dealer provisions are set out in paragraph (C) and subparagraphs (1), (2), (3) and (4) of Section 943.01, supra. It is my opinion that non-resident sellers are not within these exclusionary provisions since Section 943.01, supra, makes no distinction based on residency.

However, a seller of livestock is not a dealer and is not required to obtain a license unless he buys, sells, slaughters, exchanges, or transfers animals in an amount of more than one hundred head of cattle or horses, or two hundred head of feeder cattle or calves, or three hundred head of sheep or swine during any one year as provided in paragraph (C), Section 943.01, supra. The decision to be made then by the department of agriculture is whether or not the seller is selling more than the amount described by statute. This determination is not a matter of discretion, it is a matter of fact and if the seller sells one hundred one head of cattle he must obtain a license.

Therefore, it is my opinion and you are hereby advised:

1. All sellers of livestock, residents or non-residents, are required to be licensed if they are "dealers" or "brokers" except those who do not come within any of the exclusionary provisions of paragraph (C), including subparagraphs (1), (2), (3) and (4) of Section 943.01, Revised Code.

2. The determination of whether or not a seller is excused from obtaining a license is to be determined from the facts by the Department of Agriculture.

3. The General Assembly has not excepted non-residents from obtaining a license, therefore, non-residency is not a criteria to be considered in excusing a seller from obtaining a license.