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AGRICULTURAL SEED LAW — ESTABLISHMENT OR PLACE OF BUSINESS, WHERE SEEDS OFFERED FOR SALE, MUST HAVE ON HAND STOCK OF SEEDS FROM WHICH PURCHASE ORDERS ARE FILLED TO BE SUBJECT TO LICENSE REQUIREMENTS — SECTION 5805-13 G.C.

## SYLLABUS:

*In order to be subject to the license requirements of the Agricultural Seed Law (section 5805-13, General Code), an establishment or place of business where seeds are offered for sale must have on hand a stock of seeds from which purchase orders are filled.*

Columbus, Ohio, May 9, 1941.

Hon. John T. Brown, Director of Agriculture, State Office Building,  
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion as follows:

“Will you please give the Department of Agriculture your opinion of the following legal question, which relates to the Agricultural Seed Law of Ohio as found in G.C. 5805-1 to 5805-16.

Under Section 5805-13, it is stated that for the purposes of defraying the cost of inspection and analysis of agricultural seeds, each separate place of business in which seeds are offered for sale shall obtain an Agricultural Certificate from the Director of Agriculture to sell seeds — the fee of which is five dollars.

The question arises as to what constitutes a ‘place of business’ subject to these license requirements.”

You state in a subsequent communication that you are concerned only with the status of a so-called order taker who does not have a stock of seeds on hand from which he can make immediate delivery. Such salesman takes the order and transmits the same to the home office.

Thereupon, the seeds may be sent directly to the purchaser or they may be sent to the order taker for delivery to the purchaser. You further state that your problems are entirely intrastate.

Section 5805-13, General Code, provides in part:

“For the purpose of defraying the cost of inspection and analyses of agricultural seeds under the provisions of this act, it is hereby further provided that before any person, firm, association, company or corporation shall sell, offer for sale, expose for sale in this state any of the agricultural seeds, and/or vegetable seeds, except as provided in section seven (G.C. §5805-6) of the Ohio agricultural seed law, he or they shall pay each year a license fee to the director of agriculture, for each separate place of business in which seeds are offered for sale, and shall receive from said director of agriculture a certificate to sell agricultural and/or vegetable seeds until the first day of January next following. Such license fees shall be as follows:

(a) When sold, offered or exposed for sale in quantities not to exceed eight ounces for any container, excepting packets and cartons in consignment or commission boxes included in paragraph (d) the fee shall be 25 cents.

(b) When sold, offered or exposed for sale in quantities not to exceed ten pounds for any container, the fee shall be two dollars and fifty cents.

(c) When sold, offered or exposed for sale in quantities up to and exceeding ten pounds for any container, the fee shall be five dollars.

(d) When seeds are sold on consignment or through commission box sales in packets of eight ounces or less, each separate commission or consignment box shall carry an inspection tax stamp. Such inspection tax stamp fee shall be twenty-five cents, and shall be attached to each consignment or commission box, on or before delivery to the consignee or vendor in Ohio. Such stamp shall be attached in such a manner as not to cause said stamp to be destroyed upon the opening of the consignment or commission box. Such stamps shall be purchased from the director of agriculture each year. A refund shall be made for all stamps purchased and not used each year.

(e) When seeds are offered for sale from a truck or other vehicle each such vehicle shall be considered a separate place of business and shall carry a seed license prominently displayed.

\*. \* . \*

1932, Vol. I, page 240, the second branch of the syllabus reads:

“A salesman soliciting orders for agricultural seeds is not required to comply with the licensing provision of section 5805-13, General Code, when such orders are not solicited in any place where seeds are offered or exposed for sale, solicited for sale or sold.”

At page 242, the then Attorney General said:

“A vendor of agricultural seeds in the state of Ohio pays a license only for each place in which agricultural seeds are offered, exposed, sold or solicited for sale. The phraseology of section 5805-13 expressly provides that the license required by that section is for each separate place of business where agricultural seeds are kept for the purpose of sale, and that no person, firm or corporation shall sell or offer for sale agricultural seeds in any place of business until and unless a license is first obtained, as provided by said section. In other words, there is no provision in section 5805-13 that requires a salesman, soliciting or taking orders for the sale of agricultural seeds in places other than those where such seeds are offered or exposed for sale, to first obtain a license, inasmuch as that section expressly provides that the license is to be obtained for each separate place of business in which seeds are offered for sale or sold.”

At the time of the rendering of the foregoing opinion, Section 5805-13, General Code, read as follows:

“For the purpose of defraying the costs of inspection and analyses of agricultural seeds under the provisions of this act it is hereby further provided that before any person, firm, company or corporation shall sell, offer for sale, expose for sale, or solicit for sale in this state any of the agricultural seeds, except as provided in section 6, sub-section (d) of this act, he or they shall pay each year a license fee to the director of agriculture of five dollars, for each separate place of business in which seeds are offered for sale, and shall receive from said director of agriculture a certificate to sell agricultural seeds until the first day of January next following.”

The reasoning of the opinion above referred to is just as applicable to present Section 5805-13, General Code. The license fee is for each separate place of business in which seeds are offered for sale. Such license is necessary before seeds may be sold, offered for sale or exposed for sale.

In view of the foregoing, it seems that to constitute a place of business in which seeds are offered for sale, the seeds must be kept in

stock for immediate delivery. The possession of samples is not sufficient.

A somewhat similar question was presented in the case of *Crawford vs. Newark Star Publishing Company*, 15 N.J. Misc. 77, wherein it was stated at pages 78 and 79:

“Vending or selling a newspaper or magazine imports a transaction presently completed or capable of being completed at once. The petitioner was not, in a strict sense, selling the newspaper. He was soliciting and taking contracts from persons who were willing to purchase this certain newspaper in the future. This is not to the ordinary mind, vending or selling newspapers. Nor do we think he was offering a newspaper for sale in the sense in which this term is intended by statute. The words ‘vending, selling or offering for sale,’ are set out in the same clause of the compound sentence making up this supplement to the statute. They should be considered together and thus considered, it is our view that ‘offering for sale’ \* \* \* any newspaper \* \* \* means a manual tender of the article in question.”

Inasmuch as all parts of the statute must be construed together it must be presumed that the words “offered for sale” as used in connection with “place of business” were used in the same sense as in the first part of the section where it is provided that before any person, etc. “shall sell, offer for sale, expose for sale” seeds, he shall pay a license fee. This being true, the reasoning of the *Crawford* case, *supra*, is applicable to the instant question and lends support to the conclusion that to constitute a place of business in which seeds are offered for sale, there must be a stock of seeds kept on hand from which an immediate delivery may be made.

It should be remembered also that it is a fundamental rule of statutory construction that licensing statutes must be construed strictly against the licensing authority. This rule is pronounced in *Crawford on Statutory Construction*, pages 735 and 736 as follows:

“Statutes which impose licenses are to be construed liberally in favor of the individual and strictly against the state. In other words, their scope should not be extended by implication, unless clearly required by the language of the act. This rule is particularly applicable where a penal provision is involved.”

In the case of *Clymer vs. Zane*, 128 O.S. 359, the first branch of the syllabus read:

“Penal statutes and statutes which impose restrictions upon the conduct of business must be strictly construed and their scope can not be extended beyond the usual meaning of their terms.”

Therefore, in specific answer to your inquiry, I am of the opinion that, in order to be subject to the license requirements of the Agricultural Seed Law (section 5805-13, General Code), an establishment or place of business where seeds are offered for sale must have on hand a stock of seeds from which purchase orders are filled.

Respectfully,

THOMAS J. HERBERT,

Attorney General.