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FOOD SERVICE OPERATION LICENSE—VETERANS' ORGANIZATION—RENTAL OR LEASE OF PREMISES AND FACILITIES TO OTHERS WHO SERVE FOOD FOR CONSIDERATION—§3732.03 R.C.

SYLLABUS:

A veterans' organization which leases or rents its premises and facilities to others who use such rented or leased premises as a place which is kept or maintained for the purpose of preparing or serving meals or lunches for a consideration is not required to obtain a "food service operation" license required by Section 3732.03, Revised Code.

Columbus, Ohio, October 30, 1958

Hon. Bernard W. Freeman, Prosecuting Attorney
Huron County, Norwalk, Ohio

Dear Sir:

I have your request for my opinion reading:

"* * * We have in Huron County a veterans' organization that rents out its premises both to individuals and to organizations to serve meals. The individuals and organizations do not have a food operation license, nor does the veterans' organization.

"My question is this: Under the above statement of facts, is the veterans' organization required to have a food service operation license, as set forth under 3732.01 of the Revised Code of Ohio and other related sections applying to the licensing of food service operations."

Upon further communication you state:

"* * * I have been informed by our Health Department that the Veterans of Foreign Wars, which does not have a food service operation license, rents its hall to wedding parties for receptions, which are generally held open to the public, although no charge is made. They also have other groups, such as garden clubs and service clubs, who put on dinners which are open to the public, and for which a charge is made. A third example is that the V.F.W. rents its hall to employees groups which have parties at the hall which are open only to members of the group, but where food is

served by an unlicensed person or organization, such as church women, who do not have a license for food service operation.”

I invite your attention initially to the legislative definition and the provisos contained in Section 3732.01, Revised Code:

“As used in section 3732.02 to 3732.08, inclusive of the Revised Code: *A food service operation means any place which is kept or maintained for the purpose of preparing or serving meals or lunches for a consideration. Provided that sections 3732.02 to 3732.08, inclusive of the Revised Code, shall not apply to:*

“(A) Homes containing what is commonly known as the family unit and their non-paying guests;

“(B) Operations serving a meal or a lunch to five or less persons;

“(C) *Churches, school, fraternal or veterans’ organizations serving meals or lunches on their premises; provided said meals or lunches are served on no more than seven consecutive days or on more than fifty-two separate days in any one calendar year;*

“(D) Dining or sleeping cars;

“(E) Food-processing and food-manufacturing establishments.

“Licensor means the board of health of any city or general health district.” (Emphasis added)

The definition of a “food service operation” must be applicable to any given situation where meals are prepared or served before any consideration of the provisos or exceptions is necessary. Further, the requirement of a license must also be applicable. Section 3732.03, Revised Code, provides:

“On or before the first day of January in each year hereafter, every person, firm, association or corporation to engage in conducting a food service operation in this state, shall procure a license for each such food service operation so conducted or proposed to be conducted. * * *”

In the situation presented by your inquiry the veterans’ organization is not subject to the provisions of Sections 3732.02 to 3732.08, Revised Code, if it (1) does not conduct a “food service operation” within the meaning of Section 3732.01, *supra*, or (2) does conduct such “food service operation” but does so on not more than seven consecutive days or on more than fifty-two separate days in any one calendar year. As provided

in Section 3732.03, *supra*, the person, firm, association or corporation which is to engage in *conducting* a "food service operation" must secure the license. When the veterans' organization rents or leases its facilities it cannot be said that such organization is "conducting a food service operation." As a matter of fact, the person or group renting or leasing the facilities may or may not be "conducting a food service operation" within the meaning of Section 3732.01, *supra*. The use of the term "conducting" indicates an intention that possession and control over the premises in the preparation or serving of meals should be exercised by the one required to be licensed. When the veterans' organization parts with possession and control over the premises to other persons, groups or organizations it ceases to be capable itself of "conducting a food service operation."

Therefore, it is my opinion and you are accordingly advised that a veterans' organization which leases or rents its premises and facilities to others who use such rented or leased premises as a place which is kept or maintained for the purpose of preparing or serving meals or lunches for a consideration is not required to obtain a "food service operation" license required by Section 3732.03, Revised Code.

Respectfully,
WILLIAM SAXBE
Attorney General