

1607.

PRODUCER-DISTRIBUTOR—REQUIRED TO BE LICENSED UNDER HOUSE BILL NO. 671, MAY NOT BE EXEMPTED UNDER SECTION 6351, GENERAL CODE, FROM PAYING FEE THEREFOR.

*SYLLABUS:*

*A producer-distributor required to be licensed under the provisions of House Bill No. 671 of the 90th General Assembly (Sections 1080-1 to 1080-23, General Code), may not be exempted under the provisions of Section 6351, General Code, from paying the fee therefor.*

COLUMBUS, OHIO, September 25, 1933.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication which reads:

“Your opinion is requested on the following question: Is an ex-soldier, who has been granted a fee exemption certificate under Section 6351 of the General Code, who is a ‘producer-distributor’ within the meaning of Section 1080-1 of the General Code required to secure a license under the provisions of Sections 1080-1 to 1080-23, inclusive, of the General Code?”

Section 6347 of the General Code and pertinent to consider in connection with the exemption provided in Section 6351, to which you refer, reads:

“Where a person files with the auditor of a county, under oath, which may be administered by such auditor, a statement of his stock in trade in conformity with the law requiring the listing of such stock for taxation by merchants or others, and pays to the treasurer of such county the proportionate amount of taxes on such stock in trade in conformity with law, and complies with the terms set forth in section sixty-three hundred and forty-nine, such auditor shall issue to him a license to peddle such stock anywhere in this state.”

Section 6348, General Code, provides:

“A merchant or his agent desiring such license shall not be required to make the statement provided for in the next preceding section if such stock has been otherwise listed for taxation.”

Section 6351, General Code, to which you refer, reads:

“An applicant for the license, provided in section sixty-three hundred and forty-seven, proving to the auditor to whom such application is made that he has served as a soldier, or sailor in the service of the United States during the late rebellion, the Spanish-American war, or the world war and has been honorably discharged therefrom, shall pay to such auditor as his fee for such license the sum of fifty cents, and

shall not be required to make any other or further payment. He shall be exempted from paying any fee for a municipal or other license, as required by law or ordinance, during the period covered by the license issued to him by such auditor."

In analyzing the statutes above mentioned, it would appear that the basis for the exemption under such sections is the making of an application with the auditor and the filing of "a statement of his stock in trade in conformity with the law requiring the listing of such stock for taxation by merchants", etc.

The license required of a "producer-distributor" arises by reason of the provisions of the so-called Burke Bill (House Bill No. 671), passed by the 90th General Assembly and entitled "An act to regulate the distribution of fluid milk or cream and for this purpose to create the Ohio milk marketing commission and to define its powers and duties, and to declare an emergency."

Section 1 of the act (Section 1080-1, General Code), among other things, defines the term "milk" in the following language:

"'Milk' means the lacteal secretion of a dairy animal or animals, and includes such secretion when cooled, pasteurized, standardized, or otherwise processed, with a view to being sold as milk, and also cream, butter milk and skimmed milk sold or intended to be sold as such for human food; said term excludes the lacteal secretion of a dairy animal or animals sold or intended to be sold for any other purpose."

Said section further defines "producer-distributor" as follows:

"'Producer-distributor' includes all persons owning or managing and controlling a dairy herd or herds who put only the milk produced therefrom in bottles or other unit containers in which the same is designed to be sold, or cool, pasteurize, standardize, or otherwise process such milk for the purpose of selling or distributing the same at wholesale or retail, or who sell or distribute such milk at wholesale or retail."

Said section defines "milk dealer" as follows:

"'Milk dealer' includes all persons hereinafter defined as distributor, producer-distributor, distributing broker, and all persons conducting a retail store as herein defined."

Section 6 of the act (Section 1080-6, General Code) provides in substance that whoever, being a milk dealer, engages in business in any manner except as provided in the act without being licensed or disobeys or fails to observe or comply with any lawful rule or order of the commission shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars or imprisoned not to exceed six months, or both.

Section 7 of the act (Section 1080-7, General Code) provides that "each milk dealer" shall apply to the Ohio milk marketing commission for a license to engage in business as a "distributor, a producer-distributor, a distributing broker, or to conduct a retail store as defined in this act, or in any one or more of said businesses; excepting that a producer-distributor shall not be licensed to distribute or sell any milk other than that produced from the herd or herds

owned or managed and controlled by himself." The section further requires detailed information to be set forth in the application which need not be set forth herein. The producer-distributor however must set forth in said application a statement indicating "the maximum number of pounds per month which the applicant, if granted a license, expects to sell."

Section 8 of the act (Section 1080-8, General Code) provides that upon the receipt of any application for license, the milk commission shall examine same and if it finds such application to be in proper form shall grant a license as applied for subject to the provisions of the act. The section further authorizes the commission to "decline to grant a license" when satisfied of the existence of a number of circumstances specifically set forth in the section.

Section 15 of the act (Section 1080-15, General Code) provides in part:

"For the issuance of licenses pursuant to this act, the commission shall charge and collect the following fees:

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For each producer-distributor's license the sum of one dollar in the case of each producer-distributor intending to sell less than twelve hundred pounds per month, or the sum of five dollars in the case of each producer-distributor intending to sell three thousand pounds or less and more than twelve hundred pounds of milk per month, or the sum of ten dollars in the case of each producer-distributor intending to sell more than three thousand pounds of milk per month, and in addition thereto the sum of one dollar for each delivery vehicle.

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The section further provides for certain reductions with reference to applications after the first day of October and for temporary licenses, which said provisions are unimportant for the purposes of this opinion.

From the foregoing, it is believed apparent that the Burke Bill is a special act seeking to regulate the sale of milk. It is further believed apparent from the foregoing sections that milk as defined in this act could not logically be included within the term "stock in trade" as referred to in Section 6347 of the General Code. It is believed that said section has reference to the ordinary forms of merchandise that may be listed under the merchants' taxation law and it would be impracticable, if not impossible, for one seeking to obtain a peddler's license to peddle milk, to list for taxation his stock in trade. Therefore, it may easily be concluded that by the express provisions of Section 6347, General Code, and its related sections, milk is not included and therefore there is no conflict between said group of sections and the Burke Bill.

However, in the event it could be said that there is a conflict, then it is obvious that the provisions of the Burke Bill are special in that they provide for the regulation of one particular subject-matter and because of its special nature the provisions of this act will control over the sections which provide for the exemption for a peddler's license. The Burke Bill in clear and convincing language provides that the milk commission shall charge and collect for the issuance of all licenses and that every producer-distributor is required to be licensed. It, therefore, is conclusive that if the peddlers sections hereinabove referred to can, by any process of reasoning, be construed to cover such commodities as milk, then the Burke Bill is in direct conflict with the provisions thereof. Said peddlers sections are general provisions of the statutes which have application to all sorts of commodities that might be peddled for sale. The

provisions of the Burke Bill are special because they deal with only one commodity, milk. The courts of this state have in numerous cases very clearly enunciated the rule that the general provisions in a statute are limited by specific provisions and that if there is a conflict between a general statute and one on a special subject-matter, effect should be given to the statute upon the special subject-matter. *State, ex rel. vs. Brown*, 112 O. S. 590; *Douglas vs. State*, 16 O. A. 95; *Perkins vs. Bright*, 109 O. S. 14; *Public House vs. Flury*, 25 O. A. 214.

In the case of *State, ex rel. vs. Connor, Supt. of Public Works*, 123 O. S. 310, it was held as disclosed by the first branch of the syllabus:

“Special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases and such cases are governed by the special provisions.”

In the body of the opinion the court cites with approval the case of *State, ex rel. vs. Zangerle*, 100 O. S. 414, wherein it is stated in the first paragraph of the per curiam opinion:

“A special statute covering a particular subject-matter must be read as an exception to a statute covering the same and other subjects in general terms.”

Based upon the foregoing citations and discussion, it is my opinion that a producer-distributor required to be licensed under the provisions of House Bill No. 671 of the 90th General Assembly (Sections 1080-1 to 1080-23, General Code), may not be exempted under the provisions of Section 6351, General Code, from paying the fee therefor.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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1608.

RABIES—DUTY OF COUNTY COMMISSIONERS TO PAY FOR PASTEUR TREATMENT AND OTHER MEDICAL AND SURGICAL EXPENSES OF PERSONS HANDLING ANIMALS SO AFFLICTED, WHEN—TERM “OR INJURED” DEFINED AS USED IN SECTION 5851, GENERAL CODE.

SYLLABUS:

*By virtue of sections 5851 and 5852, General Code, county commissioners are required to recognize and pay from the general funds of the county claims found to be correct and just for medical and surgical expenses, including expenses for Pasteur treatment by persons who have handled animals afflicted with rabies, such persons at the time having scratches or other abrasions on their hands.*

*Inoculation by the virus from an animal afflicted with rabies is an injury within the meaning of the term “or injured” as used in section 5851, General Code. (Opinion No. 3826, of the Opinions of the Attorney General for 1926, approved and followed.)*