

OFFICIAL OPINION NO. 125

December 7, 1945.

Hon. Ralph F. Gates, Governor,
State of Indiana,
State House,
Indianapolis 4, Indiana.

My Dear Governor:

Your letter of November 16, 1945, has been received in which you request an official opinion as to whether or not the operator of a retail grocery store for which a general retail store license has been issued by the State of Indiana, must also secure a license from the State Egg Board and pay them one dollar (\$1.00) therefor in order to sell eggs in such grocery store.

The State Egg Act is Chapter 232 of the Acts of 1941, same being Section 35-2313 *et seq.*, Burns' 1943 Supplement, the following sections being pertinent to the question presented.

Section 35-2314 Burns' 1943 Supplement, which is Section 2 of said Act provides in part as follows:

"The duty and power to administer, enforce, and carry out the provisions of this act is hereby vested in the state egg board and such board is hereby empowered and directed to:

"* * *

"(d) Provide for and issue permits to wholesalers or retailers of fresh eggs and to provide for the registration of wholesalers and retailers of eggs and for the issuance of stamps to wholesalers and for the affixing of such stamps to cases and packages containing eggs sold or offered for sale by wholesalers;"

Section 35-2315 Burns' 1943 Supplement, which is Section 3 of said Act provides in part as follows:

"Every person, partnership, firm, or corporation permitted to sell eggs as fresh under the provisions of this act shall be required to hold and display a permit near eggs being offered as fresh in each wholesale or

retail store or unit of wholesaling or retailing where eggs are sold, offered for sale or advertised for sale as fresh and must conform to all rules and regulations of the board. Such permit shall be issued by the board upon written application, approved by the board, and upon the payment to the board of a permit fee of one dollar (\$1.00) for each retail store or unit of retailing and five dollars (\$5.00) for each wholesale store or unit of wholesaling; such permit shall be valid for the period of one (1) year but application for a renewal of such permit must be made before the expiration of such term. * * *” (Our emphasis.)

Section 35-2318 Burns' 1943 Supplement, which is Section 6 of said Act in part provides as follows:

“(b) The word ‘retailer’ when used in this act means any person, firm, or corporation, who sells shell eggs for human consumption and not for resale.”

Section 35-2319 Burns' 1943 Supplement, which is Section 7 of said Act, being the only section granting exemptions from the operation of said Act, reads as follows:

“Farmers and other bona fide egg producers who sell and deliver on their own premises fresh eggs produced by their own flocks on their own premises, or who sell and deliver eggs not described as ‘fresh’ to wholesalers or retailers, and produced by their own flocks, are exempt from the provisions and requirements of this act. Any farmer or other bona fide egg producer desiring to do so may apply for a fresh egg permit or registration as a wholesaler or retailer, by complying with the provisions of this act. The provisions of this act shall not apply to the sale of eggs graded and sealed as U. S. Grade A under the laws of the United States.”

Section 35-2320 Burns' 1943 Supplement, which is Section 8 of said Act in part is as follows:

“Every wholesaler or retailer selling shell eggs shall, before April 1 of each year, file with the board a

statement setting forth the fact that such wholesaler or retailer desires to sell shell eggs fit for human consumption. Such statement shall designate the name of the wholesaler or retailer desiring to register and the location of his principal office. Blank forms for such registration shall be furnished by the board. The board shall register the facts set forth in such registration in a permanent record. * * *

“The board shall require and collect from each retail store or unit of retailing, a fee of one dollar (\$1.00): Provided, however, That any retail store or unit of retailing holding a fresh egg permit under the provisions of Sec. 3 (§ 35-2315) of this act shall be exempt from the payment of the registration fee.”

From a consideration of the aforesaid sections of the statute it is clear that the State Egg Act is for the purpose of controlling the sale of eggs in the State and that the licensing feature of all retail merchants, not coming within the exemptions contained in Section 7 of said Act, *supra*, is for the purpose of effectuating such control.

The Chain Store License Law under which this store had a general license is Section 42-301 *et seq.*, Burns' 1933, Chapter 207, Acts 1929. Said Act only requires a license to open and operate a store and does not attempt to authorize such store to sell any kinds of goods, wares, and merchandise without consideration of other State laws and must be construed in *pari materia* with other licensure laws. The Chain Store Law is purely a tax statute (Tax Commissioners v. Jackson, 1930, 283 U. S. 527, 542), while the State Egg Law is an Act to control the quality and standard of eggs sold on the open market in this State.

I am therefore of the opinion the operator of a retail grocery store being the holder of a general retail store license issued by the State of Indiana for such store, must also secure from the State Egg Board a license from the State Egg Board to sell eggs in such store and pay therefor the sum of one dollar (\$1.00).