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May 18, 1953
Opinion No. 53-101

TO: Mr. James D. Kaffenberger
State Egg Inspector
Capitol Building
Phoenix, Arizona

RE: Effect of Egg Act on interstate commerce.

QUESTION: Can the office of the State Egg Inspector enforce the licensing and inspection fee provisions of the State Egg Act on out-of-state dealers transporting, selling and distributing eggs in Arizona without interfering with interstate commerce?

The licensing and inspection fee provisions of the State Egg Act are contained in Sections 68-936 and 68-937, A.C.A. 1939, as amended:

> "68-936. Licensing--Exception.--(a) After ninety (90) days from the effective date of this act no person shall act as a dealer or manufacturer engaged in the business of buying, candling, grading, peddling, distributing, dealing in, trading in eggs for resale within the state of Arizona or engaged in the business of breaking eggs for resale within the state of Arizona without first obtaining a license therefor from the state egg inspector. Applications for such license shall be made in writing upon forms to be obtained from the state egg inspector, accompanied by a license fee as hereinafter provided. The annual license fee for such business shall be twenty-five ($25.00) dollars for each place or location where such business of the applicant is being or will be conducted, provided any exclusive retailer is exempt from said license fee. Said license shall be conspicuously displayed and posted at each place or location where such business of licensee is being conducted. Every license shall expire on the 28th day of February next following the issuance thereof. A new license may be

obtained for an additional period of one (1) year upon written application therefor and payment of a twenty-five ($25.00) dollar fee for each place or location where such business is being or will be conducted."

"68-937. Inspection fee--Penalty-Exception.--(a) An inspection fee of not more than two (2) mills per dozen shall be paid by a dealer, manufacturer or producer on all eggs sold to a retailer, hotel, hospital, restaurant, other eating place or consumer for human consumption within the state. Inspection fees on eggs used for the purpose of breaking, freezing or drying shall be paid by the manufacturer if sold or offered for sale for human consumption:

(1) If it appears that the revenue derived from inspection fee is more than is required for the administration of this act, the inspector, shall have power to decrease the inspection fee, and at any time thereafter he may increase or decrease the inspection fee, but at no time shall it exceed in amount two (2) mills per dozen."

The courts have held that a state under the exercise of the "police power" may pass regulatory acts providing for inspection fees. 1943 D. C. Fla. U. S. v. MAYO (1943) D. C. Fla., 47 F. Supp. 552. Thus, a state under its police power can regulate the introduction of articles in order to insure their purity. SCHOLLENBERGER v. PENN., 171 U. S. 1. State inspection laws designed to safeguard the inhabitants of a state from fraud and imposition are valid when reasonable in their requirements, and not in conflict with federal rules, although they may incidentally affect interstate commerce in their relation to articles brought into the state and held for sale in the original imported package. TEXAS CO. v. BROWN, 258 U.S. 466; PURE OIL CO. v. MINN., 248 U.S. 158. Although states may authorize the exaction of fees and charges to cover the expenses of inspection, a law affecting property moving in interstate commerce will be declared void if the inspection charge is obviously and largely in excess of the cost of inspection. PHIPPS v. CLEVELAND RYF. CO., 261 U. S. 479, also TEXAS CO. v. BROWN, supra.

More particularly, the courts have held the regulation of the sale of eggs is within the police power of the state and a reasonable regulation on that subject which is intended to protect

the public health against unwholesome eggs, and which does not infringe upon the commerce clause of the Federal Constitution, is valid. RE BEAR, 15 P. 2d. 489; AMOS BIRD CO. v. THOMPSON, 274 F. 702.

Therefore, the office of the State Egg Inspector may enforce the provisions of the Egg Act even though the provisions of the Act might incidentally interfere with interstate commerce.

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