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Opinion No. 55-55

REQUESTED BY: William J. Lundahl
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Arizona Commission of
Agriculture & Horticulture
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OPINION BY: Robert Morrison, The Attorney General
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QUESTION: Do brokers operating in the State of
Arizona who distribute seed in Mexico
only, need to be licensed as seed
dealers under Chapter 49, Section 511
of the laws of the State of Arizona?

CONCLUSION: Brokers who distribute seed in Mexico
only, although buying or shipping seed
through the state of Arizona, need not
be licensed as seed dealers under Chapter
49, Section 511, A.C.A., 1939.

The question to be considered here, is actually one of inter-
state commerce, and if it be determined that the business is strictly
interstate business and not a mixture of interstate and intrastate
business, the question then becomes one of whether we have the power
to license such a business. If taxing such a business becomes a
burden on interstate commerce, then we are restricted from imposing
such a tax (a license is an excise tax) by the Commerce Clause of
the Federal Constitution.

A differentiation is made, between a tax for revenue and a tax
under the police power, in considering the question of whether a
state tax is a burden on interstate commerce.

Many times a tax laid by a state under the police power, to
correct some existing evil, will be considered not to be a burden,
while a tax for revenue is considered such a burden.

Even where a license is issued under the police power, if the
business is strictly interstate, and there are not local incidents
to the business, such tax will be considered a burden on interstate
commerce.

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" "Charging a Commission Merchant a license fee where he sold farm produce but all in interstate commerce would contravene the Commerce Clause of the Federal Constitution." 113 So., 254, STATE vs. CECIL.

"State law or Municipal Ordinance which taxes an interstate transaction cannot be sustained simply because it is non-discriminatory."
LEIBOLD vs. BROWN, 71 So. 2d 7.

Citing FICKLEN v. TAXING DIST. OF SHELBY COUNTY, 145 S. 1, 12 S. Ct. 810, 812, 36 L. Ed. 601.
BRENNAN v. CITY OF TITUSVILLE, 153 U. S. 289, 14 S. Ct. 828; 38 L. Ed. 719.

"If a person is engaged in both intrastate business and interstate business he is subject to taking a license, but if engaged in only interstate business, he is not." J. E. RALEY & BROS. v. RICHARDSON, 264 U. S. 157, 44 S. Ct. 256, 68 L. Ed. 615.

"If buyers and sellers were from different states, and the transactions involved the negotiation of business across State lines, there being not sufficient local incidents to the transaction, tax will not be sustained." KEYSTONE METAL CO. v. CITY OF PITTSBURGH, 97 A. 2d, 797.

In this case, if the seed dealers sell and distribute all their seed in Mexico, even though bought in Arizona or shipped through Arizona, it will be considered strictly interstate business. But if these dealers sell or distribute any seed in this State, they will be considered to be doing a mixed intrastate and interstate business, and will be liable for the tax.

Should the Commission of Agriculture determine that such dealers are doing only interstate business, then such dealers are not required to obtain a license under Section 49-511, A.C.A., 1939.

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