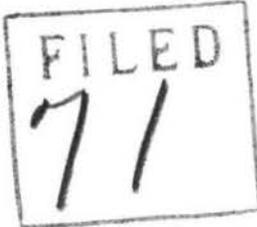


LOCKER PLANTS: ) A license to operate a particular locker plant  
) may, with the written permission of the Com-  
AGRICULTURE: ) missioner of Agriculture, be transferred from  
) one person to another; but such license may  
) not be transferred from one locker plant to  
) another.



August 18, 1953

Honorable Paul L. Porter  
Director of Dairy Division  
Department of Agriculture  
Jefferson City, Missouri

Dear Sir:

We render herewith our opinion based on your request of August 4, 1953, which request reads as follows:

"Section 196.455 RSMo 1949 states in part:  
'A license issued for a locker shall be transferable upon written permission of the Commissioner.'

"The Locker License form in use by this Department reads as follows: 'This is to certify, That ..... of ....., Missouri, has paid to the Missouri State Department of Revenue the necessary License Fee as required by the Frozen Food Locker Plant Law, and is hereby granted permission to operate within the prescribed limits of this Law. This License is transferable from One City or Town in this State to another City or Town in this State, upon written permission of the Commissioner of Agriculture.'

"There are two kinds of transfer with which we are concerned--transfer or change of location; and transfer or change of ownership.

"I should like your opinion as to whether it is lawful to transfer license in case of a change of location of the plant or a transfer of ownership or both."

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We believe that the license transfer referred to in Section 196.455, RSMo 1949, for which permission of the Commissioner of Agriculture is required, is the transfer from one person to another, and not from one locker plant or location to another.

We reach that conclusion from an interpretation of Section 196.455, RSMo 1949, reading as follows:

"196.455. Annual license required.--It shall be unlawful for any person, firm, copartnership or corporation to operate a locker plant in this state unless such person, firm, copartnership or corporation has secured an annual license therefor from the department. A separate license shall be secured for each locker plant. The application for such license shall be in writing on forms prescribed and furnished by the department. A license issued for a locker shall be transferable upon written permission of the commissioner."

Now, the obvious meaning of the first sentence thereof is that no person, firm, copartnership, or corporation shall operate a locker plant unless that particular person, firm, copartnership or corporation first obtain a license to do so. This standing alone, would rule out the possibility of assignment from a licensee to a succeeding owner or operator.

However, the last sentence of the statute provides that, with the written permission of the Commissioner of Agriculture, such license may be transferred. We take this to be designed as a qualification on the first sentence, and permits transfer and assignment from one person to another of a license on a given locker plant with the written permission of the Commissioner.

We believe this does not refer to transfer of a license from one plant or location to another. Notice the second sentence of the above-quoted Section 196.455:

" \* \* \* A separate license shall be secured for each locker plant. \* \* \*"

This indicates that a license, issued for one plant, could not be transferred to another.

Our conclusion is further buttressed by these considerations:

1. The law sets up no personal standard for the licensee to meet -- such as good character, freedom from disease, citizenship, age, etc. The standards set up refer to the plant itself, its

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equipment and its operation, Sections 196.475 to 196.510, RSMo 1949. Hence, it may be said that the license issued is referable to a particular plant, and not to the operator. The conditions in various plants, as to sanitation, equipment, and operation will vary, making transferability of the license from one plant to another impractical.

2. The license fees prescribed by Section 196.460, RSMo 1949, vary with the sizes or capacities of different plants. The statute does not provide for any adjustment of fees on transfer from one locker plant to another of a different size by authorizing the Commissioner to condition his permission to transfer on the payment of additional fees, or by authorizing a refund of fees. This points toward the conclusion that no transfer from one plant to another was contemplated.

#### CONCLUSION

It is the opinion of this office that a license to operate a particular locker plant may, with the written permission of the Commissioner of Agriculture, be transferred from one person to another; but such license may not be transferred from one locker plant to another.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly,

JOHN M. DALTON  
Attorney General

WDK:fh,lw