

Manufacturer's License: A person who quarries and crushes stone and sells same is a merchant and not a manufacturer. A person who makes cheese is a manufacturer.

Merchant's License:

June 24, 1947



Mr. Frank Collier
Prosecuting Attorney
Mountain Grove, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion which reads as follows:

"I have been asked by the County Court of Wright County to request your department for an opinion on the following:

"A resident of Douglas county operates a lime crusher in Wright County. The stone is quarried by his employees, and crushed in his machinery. In addition to selling lime, he sells crushed rock. The machinery and equipment is worth some \$40,000, and he sells an enormous amount of both lime and crushed stone.

"A cheese company, a corporation, operating in various counties, has a plant in Mountain Grove, where they buy whole milk and process it into cheese.

"Are the above, or either of them, subject to the provisions of Section 11342.1? If not, what is the proper section for levying a tax against these concerns?"

Laws of Missouri 1945, page 1954 (Section 11342.1 M.S.A.) provides in part as follows:

"All manufacturers in this state shall be licensed and taxed on all raw material and finished products, as well as all the tools, machinery and appliances used by them, in the same manner as is or may be

Mr. Frank Collier

June 24, 1947

provided by law for the taxing and licensing
of merchants; * * * * *

(Underscoring ours)

A manufacturer is defined in Section 4, Laws of Missouri 1945,
page 1855 (Section 11342.4 M.S.A.) as follows:

"Every person, company or corporation who shall hold or purchase personal property for the purpose of adding to the value thereof by any process of manufacturing, refining, or by the combination of different materials, shall be held to be a manufacturer for the purposes of the foregoing section."

We take up your two questions in the order that they are presented in your request to determine whether a person or corporation who quarries stone and operates a lime and stone crusher, or operates a cheese factory is a manufacturer within the meaning of the above two quoted sections.

I.

A person operating a stone quarry and a stone crusher is not required to obtain a manufacturer's license.

The weight of authority appears to be that the quarrying, crushing, or grading of stone, without further alteration of the nature of the product, does not constitute "manufacturing," within the meaning of tax statutes. The reasons assigned for this rule are generally the same in effect--no new or different article is produced by the process, the product still being stone after such operations, though in altered shapes and sizes.

38 C. J., page 987 states:

"Quarrying is not manufacturing, neither is crushing of stones in and of itself a manufacturing process, unless it results in the production of a new and different article. * * * * *"

In Iowa Limestone Co. v. Cook, 211 Iowa, 534, 233 N. W. 682, the court, holding that a company engaged in the business of blasting limestone from a natural deposit and crushing and

screening it to merchantable sizes, after which it was loaded and shipped directly to purchasers, was not a "manufacturer," within the meaning of a statute imposing a tax upon manufacturers, said: "The appellant (the company), under the record, does nothing that in any way changes the character of the natural product with which it deals. It simply takes stone from the natural quarry and breaks it into smaller pieces. The material is large stone taken from the quarry, and it is small stone when broken; but nothing whatever is added to or taken from this product by the process of crushing. The process does not change the product into a new or different article, having any new or distinctive name or character."

So, in *Leeds v. Maine Crushed Rock & Gravel Co.*, 127 Me. 51, 141 A. 73, machinery used in excavating and hoisting sand and gravel from a pit, hauling and grading it, and crushing the larger rocks, was held not to be "machinery employed in any branch of manufacture," within the meaning of a statute exempting from taxation machinery so employed, since "application of labor to an article either by hand or mechanism does not make the article necessarily a manufactured article. To make an article manufactured, the application of the labor must result in a new and different article with a distinctive name, character, or use."

In *Schumacher Stone Co. v. Tax Commission*, 134 Ohio St. 529, 18 N. E. (2d) 405, machinery used in crushing and screening limestone into various merchantable sizes without the application of any act or process to change the form of appearance of the broken pieces of stone, each grade being designated according to size and use, mostly for road construction but also for other minor purposes, was held not to be assessable as personal property used in manufacturing. The court pointed out that originally no one would have claimed that the process of crushing and screening stone for road purposes was manufacturing, and intimated that the use of modern machinery to obtain the same result did not render the process a "manufacturing."

Cases holding to the same effect are *People ex rel. Tomkins Cove Co., v. Saxe* (1916) 162 N.Y.S. 408; *Commonwealth v. John T. Dyer Quarry Company*, (1915) 250 Pa. 589, 95 A. 797; *Wellington v. Belmont* (1895) 164 Mass. 142, 41 N. E. 62; *Graff v. Minnesota Flint Rock Co.* (1920) 147 Minn. 58, 179 N. W. 562.

The only case to the contrary is *Rockcastle County v. W. J. Sparks Co.* (1928) 222 Ky. 606, 1. S. W. (2d) 1050 in which the court said:

Mr. Frank Collier

June 24, 1947

"* * * * By the process in question its shape, size, and adaptability are essentially changed, and the native rock is converted into an article suitable for use as road material. In our opinion this is manufacturing."

In view of the above authorities we believe it is apparent that a person who quarries and crushes rock is not a manufacturer within the meaning of Laws of Missouri 1945, page 1954 so as to require such person to obtain a manufacturer's license.

However, we believe that a person who quarries and crushes rock and sells the same must obtain a merchant's license in view of Section 11304, Laws of Missouri 1945, page 1838 (Section 11304 M.S.A.) which provides in part as follows:

"No person, corporation, copartnership or association of persons shall deal as a merchant without a license first obtained according to law; * * * * *"

A merchant is defined as in Section 11303, Laws of Missouri 1945, page 1838 (Section 11303 M.S.A.) as:

"Every person, corporation, copartnership or association of persons, who shall deal in the selling of goods, wares and merchandise at any store, stand or place occupied for that purpose, is declared to be a merchant. Every person, corporation, copartnership or association of persons doing business in this state who shall, as a practice in the conduct of such business, make or cause to be made any wholesale or retail sales of goods, wares and merchandise to any person, corporation, copartnership or association of persons, shall be deemed to be a merchant whether said sales be accommodation sales, whether they be made from a stock of goods on hand or by ordering goods from another source, and whether the subject of said sales be similar or different types of goods than the type, if any regularly manufactured, processed or sold by said seller."

Therefore a person quarrying and crushing stone and selling the same item at wholesale or retail must obtain a merchant's license.

II.

A person or corporation operating a cheese factory must obtain a manufacturer's license.

Applying the definition of a manufacturer given in Laws of Missouri 1945, page 1855, supra, and the rules laid down in the cases above we believe that a person or corporation who buys whole milk and processes it into cheese must obtain a manufacturer's license.

Cheese is defined in Section 14098, Laws of Missouri 1945, page 83 as:

" * * * * the product made from the separated curd obtained by coagulating the casein of milk, skimmed milk, or milk enriched with cream. The coagulation is accomplished by means of rennet or other suitable enzyme, lactic fermentation or by a combination of the two. The curd may be modified by heat, pressure, ripening ferments, special molds, or suitable seasoning. * * * * * "

The Missouri Dairy Law recognizes the status of cheese as a manufactured article when it provides in Section 14128, Laws of Missouri 1945, page 83 (Section 14128 M.S.A.) that:

"No person, firm, corporation, or association shall offer or expose for sale, sell, exchange, or deliver to a consumer any Cheddar cheese, washed curd cheese, soaked curd cheese, Colby cheese, cheese blends, processed cheese, cheese food compounds, or cheese spreads in which any of the foregoing named varieties of cheese are included, unless such cheese had been either:

"(1) Manufactured from milk or milk products pasteurized as defined in Section 14098 (15) herein; or

Mr. Frank Collier

Juen 24, 1947

"(2) Subjected to a heating treatment equivalent to cheese pasteurization during the process of manufacture."

We find no cases dealing with the question of whether the processing of cheese is equivalent to the manufacturing of the same but we believe the decisions relating to butter would be highly persuasive in arriving at a correct conclusion.

38 C. J., page 982 states:

"While the pasteurization of milk has been held not manufacturing, butter is said to be a manufactured product."

In *Party v. Boomhower Grocery Co.*, 164 N.Y.S. 775, the court said:

"Butter is an article which is more naturally and properly classified with those that are manufactured. In common parlance the housewife does not prepare but "makes" butter. The producer and consumer alike speak of butter as an article made or manufactured rather than as something which is prepared as by canning or other similar process. It is brought into existence by a mechanical process."

Therefore, we believe that a person or corporation who buys whole milk and processes it into cheese must obtain a manufacturer's license.

CONCLUSION

It is therefore the opinion of this department that a person or corporation who quarries and crushes rock is not a manufacturer but a merchant and must obtain a merchant's license. It is further the opinion of this department that a person or corporation buying whole milk and processing it into cheese is a manufacturer and must obtain a manufacturer's license.

Respectfully submitted

APPROVED:

ARTHUR M. O'KNEFE
Assistant Attorney General

J. E. TAYLOR
ATTORNEY GENERAL