

OPINION
48-127

March 15, 1948 (OPINION)

FOOD AND DRUGS

RE: Oleomargarine - Sales in State

Re: Sections 19-0505 and 19-0506, 1943 Revised Code

Yours of the 12th of March, 1948, with copy of letter of March 10th, to Mr. A. N. Lavik, director, State Laboratories Department, has been received and sent to my desk.

Section 19-0505, when read with section 19-0506, clearly applies only to persons, etc., who sell, etc., oleomargarine in this state. It does not authorize or require persons, etc., who do not have oleomargarine for sale, etc., in this state, to be licensed.

In other words, persons, etc., having possession of oleomargarine outside of this state are not required to be, nor permitted to be, licensed to sell oleomargarine in this state. It is the retail sale that is taxed, and the person, etc., who has it in possession in this state with intent to sell at either wholesale or retail must be licensed.

However, Section 19-0508 provides that the state treasurer shall collect a tax of ten cents per pound upon all oleomargarine sold to consumers in this state. Under this section, therefore, the owner of a cafe in this state would be required to pay this tax notwithstanding the fact that the oleomargarine was purchased outside of the state.

Section 19-0513 provides that no person shall use or consume within the state any oleomargarine unless the same has been taken from a package or container having attached thereto the stamp or stamps required under this chapter to denote the payment of the tax thereon.

Reading these statutes together, it necessarily follows that the owner of a cafe who purchases oleomargarine from a manufacturer or jobber outside of the state to be used in this state must have affixed thereto the stamps required by law.

NELS G. JOHNSON

Attorney General