

**OPINION
50-162**

May 25, 1950 (OPINION)

POULTRY IMPROVEMENT BOARD

RE: Collection of Feed Fees

I am in receipt of your letter of April 29, 1950, in which you request an opinion relative to the "collection of feed fees." You state that: "The Board is interested in knowing whether or not the manufacturer shipping feed into the state under bill of lading can be held responsible for the fees."

You enclose a letter you have received from the attorneys representing the Northrup, King & Co., and as you do not contradict the facts set out therein, I assume that you are agreed that the situation is as represented. The pertinent part of the enclosed letter is as follows:

Northrup, King & Co. has no office in North Dakota and does not maintain any stock of goods in this state. Some residents of your state purchase feed from Northrup, King & Co. pursuant to orders solicited by salesmen representing Northrup, King & Co. Such salesmen travel out of an office located in the State of Minnesota, all orders obtained are subject to acceptance in the State of Minnesota, and all shipments are made f.o.b. a point in Minnesota."

Section 4-1310 (5) N.D.R.C., 1943, provides:

LICENSES AND FEES. No person shall engage in the business of poultry or turkey buyer, processor, packer, hatchery operator, baby chick jobber or salesman, record of performance breeder, or poultry or turkey feed manufacturer, wholesaler, or retailer, without first securing from the North Dakota poultry improvement board a license to engage therein. All such licenses shall expire on the first day of July of each year, and shall be issued or renewed only upon payment to the board of such fees as it may fix for each of said occupations, not exceeding, however, the amounts hereinafter set forth:

* * *

5. For poultry and turkey feeds manufacturers, wholesalers, and retailers, the annual license fee shall not exceed one dollar plus fifty cents per ton for all mixed poultry feeds produced or sold in this state. The poultry improvement board shall collect a license fee from only one source, and if the fee is paid by the manufacturer or wholesaler, it shall not be collected from the retailer. A person shall be deemed to be a retailer who sells poultry or turkey feed to the ultimate consumer.* * *

The underlined portion of the above quoted section should be read as applying only to those engaged in business within the state of North

Dakota. It can have no application to those engaged in business outside the state or to those persons who are engaged in interstate commerce.

With this in mind we must determine whether or not under the facts the Northrup, King & Co. is engaged in doing business within the state of North Dakota.

The company has no office nor does it maintain a stock of goods within the state. Orders are subject to acceptance in the state of Minnesota and shipments are made f.o.b. at a point in Minnesota.

These facts lead to the conclusion that the sales made by the Northrup, King & Co. are completed outside the state of North Dakota and that the shipments are moving from a point outside the state directly to the consumer within the state. In other words, the movement of these is in interstate commerce.

The fact that the company has a staff of salesmen, traveling out of an office in Minnesota, who solicit orders within the state of North Dakota, is not sufficient to enable us to say that the company is engaged in business within this state under section 4-1310 (5), supra.

WALLACE E. WARNER

Attorney General