

OPINION
43-81

September 29, 1943 (OPINION)

POULTRY BOARD

RE: Poultry Board

We have your letter of September 28th and the enclosed copy of a letter to you dated September 21st from the International Baby Chick Association. You inquire whether it is possible to collect a fee on chicks ordered by farmers through local stores which are shipped from points outside North Dakota.

Section 5 of chapter 7 of Session Laws of 1939 provides for the licensing of the occupation of selling baby chicks and turkey poults, fixing the license at one dollar per year plus fifty cents per thousand or fraction of a thousand eggs sold. It also licenses hatcheries at one dollar per year plus fifty cents per thousand eggs based upon manufacturer's rated incubating capacity.

Objection has been made that the imposition of this license on sales made through a local agent from outside of the state is a burden on interstate commerce and is invalid. We have already considered this question on the sale of poultry feed, for which a license is provided by the same law, and I herewith enclose a copy of the opinion written to you on August 18, 1941 from this office. The same rule applies to the sale of chicks in the state, even though they may come from points outside of the the state. A case in the Supreme Court of the United States even later than the one cited in that opinion is that of *Caskey Baking Company v. Commonwealth of Virginia*, 61 S. Ct. 881, 313 U.S. 117, 85 L. ed. 1223. We do not believe the case of *Real Silk Hosiery Mills v. City of Portland*, 45 S. Ct. 525, 69 L. ed. 982, which seems to be the case referred to in the letter from the International Baby Chick Association, and other "Drummer" cases are in point. There is no discrimination in this state, all are treated alike, both resident and nonresident, and no distinction is made between intrastate and interstate commerce.

We do, however, feel that the statute cannot be held to apply to hatcheries which are outside of the state of North Dakota. A hatchery in Minnesota, for example, might sell only ten percent of its incubation in North Dakota, and if this statute were held to apply, it would attempt to fix a license fee based on the entire output of the hatchery.

We are enclosing an extra copy of this letter in case you care to send it to Mr. Turnbull of the International Baby Chick Association.

ALVIN C. STRUTZ
Attorney General