



DEPARTMENT of AGRICULTURE  
STATE OF MISSOURI  
JEFFERSON CITY

JEREMIAH W. (JAY) NIXON  
GOVERNOR

DR. JON HAGLER  
DIRECTOR

*Serving, promoting and protecting the agricultural producers, processors  
and consumers of Missouri's food, fuel and fiber products.*

June 7, 2011

Justice, Health, and Welfare Committee  
St. Louis County  
Administration Building  
41 South Central Avenue  
Clayton, Missouri 63105

Re: Farmers Markets and Vendor Fees

Dear Committee Members:

The Missouri Department of Agriculture welcomes the opportunity to restate the Department's position regarding the participation of farmers at farmers' markets in St. Louis County. As you are aware, Section 150.030, RSMo. is the controlling statute that reads as follows:

***"Any farmer residing in this state who shall grow or process any article of farm produce or farm products on his farm is hereby authorized and permitted to vend, retail or wholesale said products, free from license, fee or taxation from any county or municipality, in any quantity he may choose, and by doing so shall not be considered a merchant; provided, he does not have a regular stand or place of business away from his farm; and provided further, that any such produce or products shall not be exempted from such health or police regulations as any community may require."***

In interpreting this statute the key elements are (1) what products are covered by the statute, (2) what constitutes a regular stand or place of business and (3) what health and police regulations may a community enforce on a farmers market.

### **Agricultural Products**

The Department has always held that the plain meaning of Section 150.030, RSMo. as it relates to agriculture is that any article of farm produce or farm products produced on a farm is free from license, fee or taxation from a local governmental entity. This stance is supported by Op. Atty. Gen. No. 27. Evans. 9-20-50. The Attorney General Opinion states in part, "Further that a farmer engaged in selling farm products from his farm is specifically exempt from the merchant's tax provided he does not have a



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regular stand or place of business away from the farm in which he engaged in vending his products." This approach gains further support by Op. Atty. Gen. No. 90, Trammel, 4-18-56. This Attorney General Opinion provides, "We believe that it is clear from the foregoing noted authorities that a person who engages in the occupation of horticulture, or floriculture is actually engaged in farming and would be exempt from the payment of a merchant's tax under the provisions of Section 150.040, RSMo., so long as such person does not have a regular stand or place of business away from his farm." The state interprets this to mean that all agricultural produce including but not limited to fruit, vegetables, meat, dairy, poultry, horticulture or floriculture is exempt from license, fees and taxes if not sold from a regular stand or place of business away from the farm.

### **Regular Stand**

The Department contends that the statutory language under Section 150.030 RSMo. that reads "provided, he does not have a regular stand or place of business away from his farm" means a permanent vending stand or place of business that is not located on the person's farm. The Department has determined that the temporary nature of the stalls provided at local farmers' markets do not qualify as a regular stand or place of business away from the farm. Accordingly, if a farmer regularly sold agricultural products from the same location as a permanent and ongoing business, the farmer has established a regular stand or place of business that is subject to a merchant's tax and fees. This approach is best represented in Kansas City v. Rosehill Gardens, Inc. (Sup 1976) 542 S.W.2d 776. In this case Rosehill Gardens, Inc. was operating four farms and channeling products sold from three of the farms to the location of the fourth farm. The fourth farm became the standard place of business for the sale or retail of the products grown by Rosehill. The court ruled that the fourth farm was a regular stand or place of business and Rosehill Gardens, Inc. could not claim the Section 150.030, RSMo. exemption on the products funneled to the fourth farm.

The typical vendor at a farmers' market is not an agricultural corporation like Rosehill Gardens, Inc. The typical vendor is a small producer that attends farmers markets throughout the state to sell his/her agricultural products from a temporary booth or stall. The nonpermanent nature of the operation exemplifies the intent of the legislature to provide an exemption for license, fee or taxes for small producers/vendors to sell their wares.



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## Health Regulations


The statute provides that produce or products are not exempted from local health or police regulations. Thus, it is acknowledged that products provided by vendors at farmers markets are not exempted from reasonable health or police regulations that a local community may require.

## Conclusion

Any article of farm produce or farm products produced on a farm offered for sale at a farmers' market is free from license, fee or taxation from a local governmental entity. The caveat is that the vendor may not have a regular stand or place of business away from the farm to be eligible for the statutory exemption. A regular stand means a permanent vending stand or place of business that is not located on the person's farm or it means a stand is the place of regular use. Regular use is a use that is usual, normal, or customary, as opposed to an occasional, special, or incidental use. Typically, regular use involves a place of business with normal work hours (nine to five) and a normal work week (Monday thru Friday) so, a vendor at a farmers' market merely makes occasional use (weekends) of a booth provided by the local farmers' market. It is the Department's position that the vendor occupied booth at a farmers' market is not permanent and is operated less than a normal regular use standard. Therefore, pursuant to Section 150.030, RSMo, a vendor at a farmers' market does not have a regular stand or place of business away from his/her farm, the vendor's wares are not subject to local tax, license or fees and the booth or site of sale is not exempt from reasonable health or police regulations.

If you would like to discuss further or have any questions, feel free to contact me at (573) 751-2613.

MISSOURI DEPARTMENT OF AGRICULTURE

  
Michael E. Warrick  
General Counsel

Cc: Dr. Jon Hagler, Director  
Steve Allison, ABD