

M e m o r a n d u m**295.1140**

To: Mr. T. P. Putnam

August 5, 1968

From: Philip R. Dougherty

Subject: Pet Bird Banding Law and Applicability of Sales Tax.

Chapter 4 (§§ 2100-2108) "Pet Birds", is part of Division 3, "Quarantine and Pest Eradication", of the Health and Safety Code. This chapter interdicts the raising and sale of shell parakeets or budgerigars unless they are banded. The issuer of any bands is required to have a permit granted by the State Department of Public Health, give a bond and make reports as required by the regulations of the State Board of Public Health. The board may adopt regulations necessary for public health when psittacosis or other bird transmitted diseases require it. Section 2106, "fees" presently reads:

"All manufacturers selling or marketing bands prescribed in Section 2100 shall collect a fee for the department on each such band sold. The board shall provide by regulation the amount of the fee to be collected, the total amount of such fees to yield a sum approximating the estimated cost of the administration of the parakeet banding program. All fees collected by manufacturers under this chapter shall be paid to the department quarterly on or before the last day of the month next succeeding each quarterly period. Such fees shall be paid by the department into the General Fund in the State Treasury."

The section does not state the specific activity the fee is levied upon, nor does it designate a fund from which the fees should be collected by the manufacturer. The duty to collect the fees is coincident with the sale of the bands, and the logical expectation is that the fee be collected by the manufacturer from the purchaser of the band. Although the Pet Bird Banding Law does not, in its other parts, impose the duty on the purchaser to pay the fees to the manufacturer or to the department.

In a telephone conversation, Dr. Dean of the Bureau of Communicable Diseases said he was familiar with the history of the Bird Banding Law. This section was amended to its present form in 1963. (Before the amendment it read that manufacturers should pay a fee to the department

for each band sold, and the fees were made due and payable to the department quarterly.) The 1963 amendment was supported by the Pet Bird Advisory Committee with the expectation that the amendment would result in excluding the fee from measure of the sales tax. The use of the word "collect" was expected to accomplish this end. It is the policy of the Department of Health to regard the manufacturer as liable for the fees whether or not it specifically makes a collection from the purchaser.

The collection by the manufacturer from his customer is a specific amount required by the department and is collected in fulfillment of the duty required of him by statute. If the manufacturer does collect the fee from his purchaser, which collection is evidenced by a separate statement or notation on the billing, the band fee appears to be excludable from gross receipts.

PRD:smk [1b]