

MERCHANTS:
LICENSE:
TAX:

Warehouses located in Clay County, Missouri storing merchandise for a number of companies whose offices are not in Clay County, Missouri, and which act merely as shipping points for merchandise which has been sold elsewhere are not to be considered merchants within the purview of Chapter 150, RSMo 1949.



October 16, 1958

Honorable Stephen R. Pratt
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Mr. Pratt:

We wish to respond to your request of March 10, 1958, which we quote as follows:

"In North Kansas City, Clay County, Missouri we have a warehouse which stores merchandise for a number of companies whose offices are not in Clay County, Missouri. Orders are obtained for the merchant at the main office or one of the branch offices of the company. The orders are then forwarded to the warehouse where they are filled. The merchandise which is in storage at the warehouse may be disbursed locally or anywhere over a large area, just depending upon where the person ordering the merchandise might desire it to be shipped to. The question which is confronting the Assessor is whether or not those companies using the warehouse for storage and a central point of distribution would fall within the purview of Chapter 150 of merchants and manufacturer's license thereby requiring the company storing merchandise in Clay County to obtain a merchants or manufacturer's license and to pay taxes on the merchandise in this county."

It is the opinion of this office that from the facts which you have submitted, those companies which maintain warehouses in Clay County for purposes of distribution of merchandise are not to be deemed merchants in Clay County for the purpose of ad valorem taxation as set out in Chapter 150 of the Revised Statutes of Missouri 1949.

In reaching our conclusion we wish to set out those sections of Chapter 150 which we consider to be controlling. You will note

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that Section 150.040, RSMo 1949, is the section which authorizes the ad valorem tax to be levied against the goods, wares, and merchandise of merchants. We quote that section:

"Merchants shall pay an ad valorem tax equal to that which is levied upon real estate, on the highest amount of all goods, wares and merchandise which they may have in their possession or under their control, whether owned by them or consigned to them for sale, at any time between the first Monday in January and the first Monday in April in each year; provided, that no commission merchant shall be required to pay any tax on any unmanufactured article, the growth or produce of this or any other state, which may have been consigned for sale, and in which he has no ownership or interest other than his commission."

Then we direct your attention to Section 150.050, paragraph 1 which we state as follows:

"1. On the first Monday in May, 1946, and on the same date each year thereafter, it shall be the duty of each person, corporation or copartnership or persons, as provided by sections 150.010 to 150.290, to furnish to the assessor of the county in which such license may have been granted, a statement of the greatest amount of goods, wares, and merchandise, which he or they may have had on hand at any one time between the first Monday in January and the first Monday in April next preceding; said statement shall include goods, wares, and merchandise owned by such merchant, and consigned to him or them for sale by other parties."

It is obvious from this section that one of the prerequisites to merchandising within a county is that a merchant's license shall have been granted to the agency engaged in the merchandising business. The person or corporation is to submit to the assessor of the county in which such license may have been granted a statement of the greatest amount of goods and so forth which they may have used in their merchandising.

Section 150.100, RSMo 1949, quoted as follows, states very clearly that no person or corporation shall deal as a merchant without a license first obtained according to law.

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"No person, corporation, copartnership or association of persons shall deal as a merchant without a license first obtained according to law; and every applicant for a license shall affirmatively state in a written application whether goods, wares and merchandise are to be sold by applicant at wholesale, at retail, or at both wholesale and retail. Every person or corporation so offending shall upon conviction thereof be deemed guilty of a misdemeanor."

There is no question, therefore, that to engage in the practice of merchandising the person or corporation so engaged must have a license. Then we come to Section 150.120, as a limitation of the license, which we quote as follows:

"No license granted in virtue of this law shall authorize any person, corporation or copartnership of persons, to deal in the selling of goods, wares or merchandise in any other county than the one in which said license was granted, nor at more than one place within the proper county at the same time, nor for a longer period than twelve months."

Although a license may be granted a person or corporation to deal in the selling of goods, wares and merchandise in a particular county, that person or corporation cannot deal in the selling of goods, wares and merchandise in any other county than the one in which said license was granted. It would be necessary for that merchant to be licensed in all counties in which it sought to engage in the business of merchandising.

Therefore, we come to the crucial problem involved in your request, and that is whether the particular agencies in Jackson County, or counties other than Clay County, should also be deemed merchants in Clay County, Missouri, so that it would be necessary for them to obtain a merchant's license in Clay County prior to their selling of goods, wares and merchandise in Clay County. We quote Section 150.010, RSMo 1949, which is the definition, for the purpose of this chapter, of a merchant.

"Every person, corporation, copartnership or association of persons, who shall deal

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in the selling of goods, wares and merchandise at any store, stand or place occupied for that purpose, is declared to be a merchant. Every person, corporation, copartnership or association of persons doing business in this state who shall, as a practice in the conduct of such business, make or cause to be made any wholesale or retail sales of goods, wares and merchandise to any person, corporation, copartnership or association of persons, shall be deemed to be a merchant whether said sales be accommodation sales, whether they be made from a stock of goods on hand or by ordering goods from another source, and whether the subject of said sales be similar or different types of goods than the type, if any, regularly manufactured, processed or sold by said seller."

We feel that this section must be construed as an entirety. You will observe that in speaking of the merchant corporation it refers to it as one who shall deal in the selling of goods, wares and merchandise at any store, stand or place occupied for that purpose. It would seem that it is necessary that the selling of goods be conducted at the store, stand or place occupied for that purpose. We see no case which would suffice to establish the law clearly on this point, which would be based upon facts identical to the ones you have submitted. We find a number of cases, however, which pursue the thought that a merchant, to be held such, engages in the purchasing and selling of goods at the particular store. We wish to call your attention to 57 C.J.S., page 1062, the paragraph dealing with stores, shops or fixed places of dealing. We quote that paragraph as follows:

"There is some conflict with reference to the necessity of a person keeping a shop or store or having a fixed place of business in order to be considered a merchant. In the preceding subdivision it is stated that from the usual definitions given to the term it would seem that two essentials are necessary to constitute a person a merchant in the ordinary meaning of the word, and one of these essentials is that he must buy and sell. What is said to be the second essential is that he must keep a shop or store for that purpose. Thus there is the view that a merchant must have a store, stand, or other place to keep

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and sell his goods, and that the term ordinarily contemplates that the merchant is to have a fixed place of business at which he usually sells his merchandise. However, it is recognized that a merchant may buy in one place and sell in another."

We find it difficult to believe that when the agency in the county acts as little more than a warehouse or distribution point for goods, the sale of which has been conducted in another county, and perhaps the payment therefor has also been made in the county in which the sale was conducted, that it could be deemed a merchant within the purview of Chapter 150, RSMo 1949. Every situation will obviously be different. There is no line established by the statutes over which one can state that a corporation is a merchant, or is not a merchant. It appears from your letter that the orders were obtained for the merchant at the main office or one of the branch offices of the company, and that it is only distribution which is made from the warehouses in Clay County. It is our belief that a merchant would be defined as a person engaged in the buying and selling of merchandise at a fixed place of business, which business is conducted in his name, and who, during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor.

CONCLUSION

It is the opinion of this office that warehouses located in Clay County, Missouri, storing merchandise for a number of companies whose offices are not in Clay County, Missouri, and which act merely as shipping points for merchandise which has been sold elsewhere are not to be considered merchants within the purview of Chapter 150, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, James B. Slusher.

Very truly yours,

John M. Dalton
Attorney General

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