

BLDG AUCTIONEERS: Discussed. Non-resident may not obtain license.

A. J. ...

12-27

December 22, 1933.

FILED

65

Hon. H. B. Aldrich
Member of Legislature
Jefferson City, Missouri

Dear Mr. Aldrich:

We herewith render our opinion as requested by you on the following facts stated in a letter from Mr. C. R. Dawson of Grant City, Missouri, to you, which reads as follows:

"I wish you would go into the Attorney General's office and ask Mr. McKittrick to look up the Revised Statutes of Missouri of 1929, Section 13718 and the following. Now this is in regards to the auction business. I want to know if these boys over in Iowa have a right to come over in Missouri and cut prices, unless they pay a fee that is set out in these sections I mentioned above.

I like competition if it is clean, but I don't like this cut throat business. Business is hard enough to get now without having competition like this coming in on a fellow.

If he thinks these boys should take out a license, have him write the Prosecuting Attorney or the Sheriff of this County."

It is our opinion that persons doing an auction business must have a license to do same. Chapter 111, R. S. Mo., 1929, pertains to public auctioneers and Section 13718 of said chapter

provides as follows:

"No person shall exercise the trade or business of a public auctioneer by selling any goods or other property subject to duty under this chapter, or real estate, without a license."

Section 13730 reads as follows:

"There shall be levied and paid upon the proceeds of the sales of all property at auction, except as hereinafter excepted, a duty to the state on the proceeds of all sales of personal property, except corporation stocks, one and a half per cent."

Section 13733 provides what sales of property at auction shall be free of duty, and reads as follows:

"Sales of property at auction shall be free of duty in the following cases: First, when directed by any statute of this state or of the United States; second, in executing any order, judgment or decree of any court or justice of the peace of this state or any court of the United States, in case of bankruptcy or insolvency, pursuant to any law of this state or of the United States; third, when sold by any trustee in conformity to a deed of trust to secure the payment of debts; fourth, property of deceased persons sold by authority of executors or administrators; fifth, boats, vessels, rafts, lumber and other property wrecked, stranded or found adrift in any of the waters of or adjoining this state; sixth, live stock, agricultural productions, farming utensils and household and kitchen furniture sold in the county of the owner's residence; seventh, land or leasehold interest therein; eighth, each licensed merchant shall have the privilege of selling off, at auction, at

the end of every twelve months after the commencement of his business, any refused stock of goods which he may have had on hand for six months preceding, without obtaining an auctioneer's license for that purpose."

It is thus seen that a person engaged in business as a public auctioneer must have a license when he sells goods or property subject to duty and must likewise account to the State for the duty.

We call attention to other sections of the statutes, to-wit, Section 13719, which reads as follows:

"Every person who shall exercise the trade or business of an auctioneer without a license shall be liable for the amount of duty payable by law on the property sold."

Section 13725, reads as follows:

"There shall be levied upon every license, to be paid to the collector before the delivery thereof, as follows:

I--On each license for one month, twenty-five dollars.

II--On each license for three months, fifty dollars.

III--On each license for six months, seventy-five dollars."

Section 13728 provides for a bond to be given before any license shall be granted.

Section 13742 provides a penalty for violation of the provisions of said chapter.

Section 13720 reads as follows:

"The clerks of the respective county courts shall issue, at each term, as many blank auction licenses for ten days, and for one, three and six months, respectively, as the county courts shall direct."

We call attention to this section in the statute, which in our opinion, as well as the other sections heretofore referred to, bars persons not resident of the State from coming into this State and here exercising the business or trade of public auctioneering; which is Section 13727 R. S. Mo., 1929, and reads as follows:

"No person shall be permitted to sell property at auction of any kind unless he shall have resided in this state six months next preceding the time of making application for license."

(Note underscoring.)

Therefore, if auctioneers, resident of the State of Iowa, come over into Missouri and here practice the business or trade of "public auctioneering," such violate the statute and are subject to prosecution for misdemeanor. Even if these parties from Iowa desired to be licensed they could not be. (Sec. 13727).

We believe that this answers your inquiry and if you will send a copy of this opinion to your Prosecuting Attorney with the request that if these violations are occurring in his County, we are certain that he will put a stop to them.

If we may be of further assistance to you please command.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLR:EG