

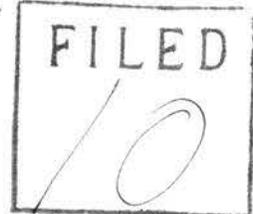
CITIES, TOWNS AND VILLAGES:

Under statute, cities, towns and villages are expressly prohibited from exacting license, taxes or fees from any farmer for the sale of produce raised by him when sold from his wagon.

September 30, 1933.

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See 71149K38 711179  
Mr. J. C. Breshears,  
Commissioner of Agriculture,  
Jefferson City, Missouri.

10-3



Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"The question bobs up, from time to time, as to the constitutional right of the farmer in Missouri to market or peddle the products of his farm or garden. Herewith are references to this question, as to Missouri and one other State. Enclosed is an old Missouri ruling, but we desire the opinion of our own present legal authority, the office of Attorney General Roy McKittrick, instead of quoting a predecessor.

In short, what are the rights of the Missouri producer of farm products and livestock, as to marketing or peddling same?

This is not a rush inquiry, and it may give way to questions of emergency character, temporarily, thanking you in advance. We need to have this on file, and may on occasion give it credited publicity, in case your office does not make it public."

Section 7179, R. S. Mo. 1929, provides as follows:

"No incorporated city, town or village in this state shall have power to levy or collect any tax, license or fees from any farmer, or producer or producers, for the sale of produce raised by him, her or them, when sold from his, her or their wagon, cart or vehicle, or from any person or persons in the employ of such farmer or producer in any such city, town or village."

The word "produce" has been defined in the case of City of Higbee v. Burgin, 197 M. A. 682, 683, to mean as follows:

"The word 'produce' may have a variety of meanings dependent upon the connection in which it is used. In reference to the produce of a farmer the court

of appeals of the District of Columbia said:

'But the common parlance of the country, and the common practice of the country, has been to consider all those things as farming products or agricultural products which has the situs of their production upon the farm, and which were brought into condition for the uses of society by the labor of those engaged in agricultural pursuits, as contra-distinguished from manufacturing or other industrial pursuits.'

The above definition of "produce" includes all sorts of grain, vegetables and meats. It is immaterial whether the meat be in the form of unbutchered stock, or whether it be butchered and ready for sale to the consumer. In the case of *City of Higbee v. Burgin* above, the City of St. Louis sought to collect a license tax from the defendant for selling meat within the city limits. The court at page 684 says:

"While the distinction between agricultural pursuits and those of an artisan or manufacturer is not an easy one in all cases, we cannot see why the killing and dressing by the farmer of fresh meat raised by him can be said to be any more the work of a manufacturer or an artisan, than the killing and dressing of poultry. The raising, killing and dressing of the latter has become one of the greatest industries of agricultural America. If instead of selling the sausage and spare-ribs of the hogs defendant had sold the lard rendered from their fat, could it be said that the lard was not 'farm produce?' Or would it do to say that when a farmer is making his butter and cheese he is engaged in the creamery business? We think not. Similar comparisons could be made ad infinitum. Whatever might have been said in the beginning as to the farmer being engaged in the pursuit of slaughtering, slaughter house operation or meat packing, when he butchered stock raised on his farm, such as the hogs involved in this case, the usages and practices of generations on American farms has in this day made such a practice one of agriculture or farming."

"We are unable to see how it can be said that fresh meats do not come within the definition of agricultural produce as that term is used in Section 10382 of the statutes."

Under Section 7179, quoted above, no city, town or village can levy or collect any license fees or tax from any farmer or producer. That Section is a prohibition by the State of Missouri to all cities, towns and villages. In *St. Louis v. Bernard*, 249 Mo. 51, l. c. 56, the court says:

"We think it is perfectly clear that the plaintiff city

cannot by ordinance authorize the doing of any act which the general laws of the State have prohibited; and where the statutes of the State expressly restrict or limit the power of a city to legislate upon a given subject, such city cannot legally overstep the boundaries marked out for it by the General Assembly."

By reason of the foregoing decision, no city, town or village or Missouri shall be able to levy or collect any tax, license or fees from any farmer or producer for the sale of produce raised by him so long as Section 7179, R. S. Mo. 1929, is upon the statute books. Municipal corporations can only exact fees and license where their charter expressly provides. While Section 7179 is in existence it is a part of the municipal charter of every city, town and village. The situation thus existing is, therefore, that the charter of every city, town and village of this State contains an expressed prohibition against levying or collecting such tax.

We have certain statutes authorizing the exaction of license fees from peddlers. A farmer, however, in selling his own produce is not a peddler. In *St. Louis v. Meyer*, 185 Mo. 583, the question was whether or not the farmer was a peddler in selling produce from his farm. The court, in denying that the farmer is a peddler, at page 599 says:

"The facts upon which this case was tried conceded that the defendant was a farmer, residing in St. Louis County, and that he simply loaded his wagon with products from his farm, and took them into the city of St. Louis for sale; that in disposing of his products, he went from place to place among the inhabitants of the city, offering them for sale and selling them.

It will be observed that section 2097 or ordinance 19703 is directed against persons who carry on the business of a peddler or hawker; in other words, a license must be obtained by those persons who engage in the business of peddling or hawking. In order to subject the defendant to the penalties imposed by the ordinance, it must be manifest that his business was that of a peddler or hawker. This proposition is simply narrowed down to the question: Was the defendant a peddler or hawker, within the common and well-understood signification of those terms? We have reached the conclusion that he was not. The agreed statements of facts upon which this cause was submitted to the trial court leaves no doubt as to the character of business in which defendant was engaged. It was that of a farmer, and the mere fact that he went from place to place, similar to that of peddler or hawker, to dispose of the fruits of his business, by no means is sufficient to warrant the adding to his name as farmer that of peddler or hawker. The disposition of the products of his farm in the manner indicated by the facts

in evidence must be treated as a mere incident to his business of farming. The statute recognizes this distinction."

We do not mean, however, to give the opinion that every seller of produce is a farmer. If an individual sells produce which he himself has not produced, he may thereby become a merchant and be subject to license, taxes and fees. Nor do we think it is necessary that the farmer raise his live stock from birth in order that he may come within the protection of the statute exempting him from taxation. He may buy stock from another and add to its value by feeding and caring for it, and then when ready for market may butcher it and in selling the meat resulting therefrom, he is within the protection of the statute. He is no less a farmer because he acquires produce and in managing his farm adds to their value and sells the finished product. However, if he is in fact a butcher or conducts another business not exempted under the statute, the mere fact that he lives upon the farm would not exempt him from such tax. We have called your attention to these suggestions because before the individual can be exempted under Section 7179 he must be in fact a farmer engaged in the farming industry as generally understood and accepted. He cannot by the mere fact that he resides upon a farm bring himself within the favored class, if in fact he is carrying on the business of a peddler or hawker, butcher, etc.

It is therefore the opinion of this Department that a farmer cannot be taxed as a peddler or hawker; that if the farmer is actually engaged in the business of farming as is generally understood and accepted, that under Section 7179 above, he may not be required by any city, town or village to pay a license tax or fee for the sale of produce raised by him when sold from his or her wagon or cart. Your question is general and we believe the foregoing fully answers it. If, however, a particular situation should arise involving this question, we should be pleased to answer the particular question involved.

Very truly yours,

  
Assistant Attorney General.

APPROVED:

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Attorney General.

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