

ITINERANT VENDOR:

RELATING TO THE SALE OF MERCHANDISE BY  
TRUCKERS AT PUBLIC AUCTION.

3-13

March 10, 1934.



Mr. W. C. Jones  
Jones Hardware Company  
Glasgow, Missouri.

Dear Sir:

This department is in receipt of your letter dated February 22, 1934, wherein you state as follows:

"There is a new kind of competition sprung up lately in this section, and I understand it is pretty general throughout the state.

"Truck loads of merchandise are being brought to our country farm sales and sold at auction; parties who are operating this kind of business are telling the farmers that this merchandise is goods left on hand at railroad freight depots, and they are obtaining it from the railway company.

"After the farmer's sale is finished they employ the auctioneer to do their selling, the items offered consist of a general run of items, such as found in hardware stores, grocery stores, harness etc.

"Would you please advise if there is a ruling against this practice to protect us against this kind of competition, if not, could there be one formed?"

Section 10103, R. S. No. 1929, sets out the statutory definition of an itinerant vendor in the following language:

"The words 'itinerant vendor,' for the purposes of this article, shall mean and include all persons, both principal and agents, who engage in, or conduct, in this state, either in one locality or in traveling from place to place, a temporary or transient business of selling goods, wares and merchandise with the intention of continuing in such business in any one place for a period of not more than one hundred and twenty days, and who, for the purpose of carrying on such business, hire, lease or occupy, either in whole or in part, a room, building, or other structure, for the exhibition and sale of such goods, wares and merchandise. The provisions of this article shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to bona fide sales of goods, wares and merchandise by sample for future delivery, nor to hawkers on the streets or peddlers from vehicles, nor to any sale of goods, wares or merchandise on the grounds of any agricultural society during the continuance of any annual fair held by such society."

Section 10104, R. S. No. 1929, sets out the statement required of "itinerant vendor" before he may procure a State license and reads as follows:

"An itinerant vendor shall not advertise, represent or hold forth a sale of goods, wares or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver, wholesale, manufacturers' wholesale, or closing out sale, or as a sale of any goods damaged by smoke, fire, water, or otherwise, unless before so doing he shall state, under oath, to the secretary of state, either in the original application for a state license, or under a supplementary application subsequently filed and copied on the license, all the facts relating to the reasons and character of such special sale so advertised, held forth, or represented, including a statement of the names of the persons from whom the said goods, wares or merchandise were obtained, the date of delivery of the

same to the persons applying for the license, the place from which said goods, wares and merchandise were last taken, and all details necessary to exactly locate and fully identify all goods, wares and merchandise to be sold."

The following Section 10105 of R.S. No. 1929, provides for the purchase of a State license by an itinerant vender in this language:

"An itinerant vender, whether principal or agent, before beginning business, shall take out state and local licenses in the manner hereinafter set forth, but the right of a municipal corporation to pass such additional ordinances relative to itinerant vendors, as may be permissible under the general law, or under its charter, shall not be affected. Every itinerant vender desiring to do business in this state shall deposit with the secretary of state the sum of five hundred dollars as a special deposit, and thereafter, upon application in proper form, and the payment of a further sum of twenty-five dollars, as a state license fee, such secretary shall issue to him an itinerant vender's license, authorizing him to do business in this state, in conformity with the provisions of this chapter, for one year from the date thereof. Such license shall set forth a copy of the application upon which it is grafted. The license shall not be transferable, nor permit more than one person to sell goods as an itinerant vender, either by agent or clerk, or in any other way than in person, but any licensee may have the assistance of one or more persons, who may aid him in conducting his business, but not act for him or without him."

Section 10106, R. S. No. 1929, provides the manner in which an application for license shall be made and reads as follows:

"Applications for licenses shall be sworn to, shall disclose the names and residences of the owners, or persons in whose interest such business is conducted, to be kept on

file by the secretary of state, and a record shall be kept by him of all licenses issued upon such applications. All files and records of the secretary of state shall be in convenient form and open for public inspection. Before selling under a state license an itinerant vendor shall exhibit it to the county clerk of the county, license collector, or other authorized officer of any municipal corporation, in which he proposes to make sales. Upon payment to such county clerk, license collector, or other authorized officer of any local license fee provided by law or ordinances, and the proof of payment of all such other license fees legally chargeable upon local sales, the local officer shall record such state license, indorse upon it the words "local license fees paid," and affix his official signature, with the date of such indorsement, for which service a fee of \$2.00 shall be paid to said officer. Failure to obtain proper indorsement made on the state license shall be subject to a like penalty as if state license had not been issued."

Section 10107, R. S. Mo. 1929, provides the manner in which the law may be enforced and reads as follows:

"The informing or prosecuting officer of the counties and municipal corporations in this state shall enforce the provisions of this law, and prosecute violations thereof. Such officers may demand the production of the proper state license from an itinerant vendor advertising or actually engaged in business, and a failure to produce such license shall be prima facie evidence against such vendor that he has none."

Section 10110, R. S. Mo. 1929, provides for penalty in failing to comply with the preceding sections and reads as follows:

"Every itinerant vendor who sells or exposes for sale, at public or private sale, any goods wares or merchandise without state license therefor, \* \* \* shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars, nor less than two hundred dollars, or by imprisonment for not more than

six months, or both."

From the foregoing, we are of the opinion that the owners of such merchandise are "itinerant vendors". The fact that the hardware, groceries and harness are being sold at public auction by an auctioneer does not change their position, since the latter is clearly acting as their agent.

We are also of the opinion that if there are any misrepresentations by the parties as to the place and manner in which they are obtaining their merchandise, such statement will have to be corrected in order to comply with Section 10104 of the Revised Statutes of Missouri, 1929, as hereinbefore stated.

We are further of the opinion that if such license has not been purchased, nor application made as provided for in Sections 10105 and 10106, R. S. of 1929, as above set out, the prosecuting attorney should demand the production of the proper license as provided for in Section 10107, R. S. of Mo. 1929, and upon failure to produce same should prosecute the violation, subject to the penalties as prescribed in Section 10110 of the Revised Statutes of 1929, as above set forth.

Yours very truly,

WOS/afj

WM. ORR SAWYERS  
Assistant Attorney-General.

APPROVED:

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ROY MCKITTRICK  
Attorney-General.