

MERCHANT--LICENSE: Persons who deal in selling ice at any stand must obtain merchandising license and execute surety bond.

January 22, 1936.



Honorable Richard Chamier
Prosecuting Attorney
Randolph County
Moberly, Missouri

Dear Sir:

We acknowledge your request for an opinion dated January 11, 1936, which reads as follows:

"Mr. Rohan is the General Manager of the Home Ice Company of Moberly, Missouri. This concern is engaged in the business of manufacturing of ice and selling the same to retailers for the retail trade. They do no retailing themselves.

"Hugh Hinton, County Collector, has requested this institution to give bond for a merchandising license in Randolph County.

"I would appreciate your advice on this subject as to whether or not the Home Ice Company is liable for a merchandising license. If possible I would appreciate this information being given verbally to Mr. Rohan and an opinion later sent to me. If it is not possible to give the information to Mr. Rohan immediately, you may then send the opinion to me, but I would appreciate one of your assistants discussing this problem with Mr. Rohan."

Section 10075 R. S. Mo. 1929, provides:

"Every person, corporation or co-partnership of persons, who shall

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deal in the selling of goods, wares and merchandise, including clocks, at any store, stand or place occupied for that purpose, is declared to be a merchant."

Section 10076 R. S. Mo. 1929, provides:

"No person, corporation or copartnership of persons shall deal as a merchant without a license first obtained according to law; and every person so offending shall forfeit to the state not less than fifty nor more than five thousand dollars for every such offense, to be recovered by indictment or information."

We believe that since the Home Ice Company of Moberly manufactures and sells ice to retailers, at the place occupied for that purpose, in the ordinary course of trade, that said company is a merchant and falls within the provisions of sections 10075 and 10076, supra, and is liable for a merchandising license tax. See *State v. Whittaker*, 33 Mo. 457.

In the case of *Kansas City v. Ferd Heim Brewing Company*, 73 S. W. 302; 98 Mo. Ap. 590, l. c. 594, the court said:

"It will be seen by these decisions that a manufacturer may or may not be a merchant within the meaning of the charter and the statute of the State. If he keeps at a store, stand or other place, in stock articles manufactured by him for sale in the ordinary course of trade, he is a merchant. If he only manufactures upon order he is not a merchant. It is therefore a mixed question of law and fact whether a manufacturer is or is not a merchant."

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The Missouri merchant's tax law does not specifically exempt merchants who sell to retail merchants, but who are not in the retail business themselves. We see no reason for exemption by implication.

The Laws of 1935, page 407, section 10078, provides:

"Any person, corporation or copartnership of persons applying for a license to vend merchandise shall, before he or they shall receive such license, execute a bond to the state, with good and sufficient surety, conditioned that he will, on or before the first day of January next following, pay to the collector of the proper county the tax due upon such license; which bond shall be approved by the collector, and his approval indorsed thereon.

We are of the further opinion that before obtaining a merchant's license, the law requires that the Home Ice Company execute a merchant's bond as per section 10078, supra, which is to be approved by the county collector.

Yours very truly

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General.

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