

PEDDLERS: Whether or not a person is a peddler depends upon the facts in each case. Peddler defined, discussed and applied.

June 3, 1936.

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Hon. Elloit M. Dampf
Prosecuting Attorney
Cole County
Jefferson City, Missouri.

Dear Mr. Dampf:

This is to acknowledge your letter as follows:

"Will you kindly give me your opinion if it is necessary for a firm to pay a state peddler's tax under Section 13318, Revised Statutes of Missouri, 1929, under the following conditions:

"The manor Bakery of Kansas City, Missouri, manufacture bread in Kansas City, Missouri and ship same to their local agents in various part of Missouri (including Jefferson City), who take this bread on their routes in carriages and solicit and sell same to the consumer."

Whether or not a person is a peddler within the meaning of Chapter 96, R. S. Mo. 1929, depends upon the facts. In City of Washington v. Reed, et al. 70 S. W. (2d) 121 the St. Louis Court of Appeals defined "hawkers" and "peddlers" as follows: Page 122.

"While it is true that the occupation of peddler is usually regarded as a lowly occupation, it cannot be seriously contended that there is anything immoral or hurtful in the business of peddling goods, wares and merchandise. Peddlers and hawkers are synonymous terms. The hawker is defined as a peddler who uses a beast of burden to carry his wares around and cries out the merits of his wares in the street, whereas

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the peddler is usually thought of as a man with 'a pack on his back,' going from place to place, exhibiting his wares for sale and immediate delivery."

Section 13312 R. S. Mo. 1929, declares certain persons to be peddlers and reads as follows:

"Whoever shall deal in the selling of patents, patent rights, patent or other medicines, lightning rods, goods, wares or merchandise, except pianos, organs, sewing machines, books, charts, maps and stationery, agricultural and horticultural products, including milk, butter, eggs and cheese, by going about from place to place to sell the same, is declared to be a peddler."

Section 13313 R. S. Mo. 1929, provides as follows:

"No person shall deal as a peddler without a license; and no two or more persons shall deal under the same license, either as partners, agents or otherwise; and no peddler shall sell wines or spirituous liquors."

Section 13317 R. S. Mo. 1929, provides as follows:

"Any person may obtain a peddler's license by application to the collector of the county in which he intends to carry on his trade, by paying the amount levied on such license."

Section 13318 R. S. Mo. 1929, provides for license fees to be paid by peddlers.

Your letter states that a bakery of Kansas City, Missouri, ships its product to local agents who sell such to consumers. You desire to know if the bakery must pay a peddler's tax. It is our opinion that the bakery would not have to obtain a state peddler's license because of the provisions of Section 13313, supra, which

section was by the Kansas City Court of Appeals in State v. Downing, 22 Mo. App. 504, l. c. 508, construed as follows:

"The next objection urged to the judgment of defendant is, that, as the license was issued to Gale, and defendant was his agent, peddling for him, Gale himself not using the license, the statute was not violated. I think the correct interpretation of section 6472, Revised Statutes, is that the license shall be issued to the person actually using it. That is, the individual peddling must have the license. I think the doctrine of principal and agent, invoked by defendant, does not apply to this statute. It says no two persons shall deal under the same license, whether they be 'partners, agents, or otherwise.' It is equivalent to saying, no person shall peddle under the guise of being a partner or agent of one who may have a license. The statute contemplates that the peddler himself will have his license at all times ready for exhibition to any sheriff, collector, constable, or citizen. Sect. 6479, Revised Statutes. It was not intended that his right to peddle should depend on his proof of agency for some one who might be licensed."

Your letter states that the bakery's local agents "take this bread on their routes in carriages and solicit and sell same to the consumer". If such is a fact the local agent would have to be licensed. State v. Smithson, 106 Mo. 149. The Springfield Court of Appeals, in City of Aurora v. Stafford, 51 S. W. (2d) 547, held that a person was not a peddler on the following facts: Page 548.

"From this agreed statement, it appears that defendant was the agent

of Crookshank's bakery in the city of Aurora. That said bakery had regular customers in the city of Aurora who were operating retail stores in said city, and who bought from said bakery in Springfield certain of its products at wholesale to be resold by them at retail. That the bakery did not sell to consumers, nor did defendant as its agent go from house to house to sell its products, but the dealings of the bakery through defendant at its agent was confined solely to sales as a wholesaler to its regular customers who were retail merchants doing business within the city limits of the city of Aurora. Do these facts show that defendant was a peddler within the meaning of the statute of the state and the ordinances of the city of Aurora?"

The Court's reasoning for holding that the facts did not show the person a peddler being as follows:

"The statute, section 13312, Rev. St. 1929, defines a peddler as follows: 'Whoever shall deal in the selling of * * * goods, wares or merchandise * * * by going about from place to place to sell the same, is declared to be a peddler.' As far as this case is concerned, the provision of the ordinance of the city of Aurora, under which defendant is prosecuted, is substantially the same as the statute. It is therefore a valid ordinance. Was defendant a peddler? We do not think so. The term 'peddler' in the statute and ordinance should be given its meaning as it is ordinarily understood. A peddler is generally understood to be a person who carries his wares with him, and goes from house to house or place to place to sell them, and does sell and deliver them to each purchaser as he goes along,

without any previous agreement relative thereto. A great many cases have arisen in this state in which this statute has been applied to a great variety of facts, but we find no case where the facts were as stipulated in this case. The cases from other states to which our attention has been called are uniform in holding that, under similar facts, the party is not a peddler. Commonwealth v. Standard Oil Co. (Ky.) 93 S. W. 613; Newport v. French Bros., 169 Ky. 174, 183 S. W. 532; Castles Ice Cream Co. v. Perth Amboy, 146 A. 37, 7 N. J. Misc. 415; City of St. Paul v. Briggs, 85 Minn. 290, 88 N. W. 984, 985, 89 Am. St. Rep. 554; State v. Fetterer, 65 Conn. 287, 32 A. 394, 395, 396; In re Watson, 17 S. D. 486, 97 N. W. 463, 466, 2 Ann. Cas. 321.

"Some of these cases go so far as to say that a wholesaler selling to a retailer and not to a consumer is not a peddler. It is not necessary in this case for us to go that far, and we are not prepared to say that under no circumstances at all could a wholesaler who sold only to retailers be held to be a peddler; but when the wholesaler confines his sales to retailers who are his regular customers he is not a peddler, even though the party delivering the goods does not know until he reaches the place of business of the retailer just how much goods the retailer will want."

We invite your attention to the fact that in the City of Aurora case the wholesaler confined his sales "to retailers who are his regular customers." In the case you present the bakery ships its product to its local agent, who in turn sell to consumers, which we assume, are not regular customers. It is our opinion, from the facts stated in your letter, that the agents selling bread of the bakery of Kansas City, to consumers,

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would have to be licensed, and if such do not obtain State licenses they would be amenable to the penalty provided for by Section 13319, R. S. Mo. 1929.

Yours very truly

James L. HornBostel
Assistant Attorney General.

APPROVED:

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

JLH:H