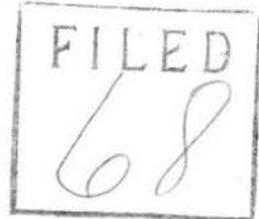


- PEDDLERS:**
1. Whoever shall deal in the selling of goods, wares and merchandise and go about from place to place to sell same is a peddler.
 2. Drivers of trucks used in the dealing and selling of goods, wares and merchandise shall be licensed as peddlers.
 3. No 2 or more persons shall deal or sell goods etc. under same license
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August 21, 1936

Honorable J. R. Oliver
Clerk of the County Court
Dunklin County
Kennett, Missouri

8-25



Dear Sir:

This will acknowledge receipt of your request of August 18, 1936 for an opinion, which reads as follows:

"We have in this county a number of merchants with business locations in towns who employ truck drivers to carry their merchandise over regularly established routes offering the same for sale, either for cash or for farm produce. The drivers of such trucks are paid a salary or daily wages for their services.

"Others operating such trucks buy their merchandise direct from wholesale dealers, drive their own trucks and own no fixed place of business. Are these persons properly considered peddlers? Must the drivers of such trucks be licensed as peddlers, or should the owner of the business operating the trucks purchase peddlers license in his name?

"If two or more such trucks are operated by the same person, must license be purchased for each truck so used?"

In your request, you have propounded three separate questions which will be disposed of by answering your first query, and in that respect your attention is directed to Section 13312, R. S. Mo. 1929 relating to certain persons declared to be peddlers. It reads in part 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."

The above quoted part of the statute is plain and contemplates that every person selling goods, wares and merchandise by going from place to place to sell same is declared to be a peddler. In the instant case, the fact that a number of merchants have business locations in towns and employ truck drivers to carry and sell their merchandise over regularly established routes offering the same for sale, would not take such truck drivers without the purview of Section 13312, supra. The mere fact that the drivers of these trucks are paid a salary or daily wage for their services would in nowise exempt them from the provisions of said section, as the statute specifically states that "whoever shall deal", contemplating that the person who takes the goods, wares or merchandise from place to place is a peddler, and such person must obtain a license.

In the case of City of Washington vs. Reed, 70 S. W. (2d), l.c. 122, the appellate court, in discussing who is deemed to be a peddler, said:

"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."

In the case of City of Aurora v. Stafford, 51 S. W. (2d) l.c. 548, the Springfield Court of Appeals, in discussing the term "peddler", as defined by Section 13312, supra, said:

"The term 'peddler' in the statute * * 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."

Section 13313, R. S. Mo. 1929, relating to the requirement of a license before one may deal as a peddler, 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."

In the very early case of State vs. Thomas Downing, 22 Mo. App., l.c. 508, the appellate court, in interpreting what is now Section 13313, supra, said:

" * 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. * 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."

Under the provisions of Section 13319, R. S. Mo. 1929, every person who is found to be dealing as a peddler, without having obtained a license to sell or deal as such peddler, and shall refuse to produce said license or permit to be read upon demand of any sheriff, collector, constable, or any citizen householder of the county, shall be deemed guilty of a misdemeanor.

CONCLUSION

In light of the above, it is the opinion of this department that:

Honorable J. R. Oliver

-4-

August 21, 1936

1. Whoever shall deal in the selling of goods, wares and merchandise, and go about from place to place to sell same is a peddler.

2. Drivers of trucks used in the dealing and selling of goods, wares and merchandise shall be licensed as peddlers.

3. No two or more persons shall deal or sell goods, wares and merchandise under the same license.

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

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

RCS:FE