

MERCHANTS: Persons preparing and serving meals in a dining room in connection with a hotel are not merchants.

1-19
January 8, 1937



Mr. Arch King
County Assessor
Koplar Bluff, Missouri

Dear Mr. King:

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

"I would like an opinion on this question: Would a person who prepared and sold meals in a dining room in connection with a hotel, but sold no other commodities than cooked food, i. e., no candy, cigarettes, or gum, be classed as a merchant, and be entitled to pay a Merchants' tax?"

Section 10075, R. S. No., 1929, defines who is declared to be a "merchant". This section reads in part as follows:

"Every person, corporation or co-partnership of persons, who shall deal in the selling of goods, wares and merchandise, * * * is declared to be a merchant."

The conclusion reached in this opinion is dependent upon the word "merchant" as used in the above section of the statute. In the case of State vs. Whittaker, 33 Mo., the court in construing the above statute, page 459, said:

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"We can not go beyond the statute to find any other definition of a merchant."

Although the court has said in the above case that it can not go beyond the statute to find any other definition of the word "merchant", we attempt to pursue the word further to determine whether or not it is sufficiently generic to include in its meaning the person that sold and prepared meals in a dining room in connection with a hotel. In the case of *Kansas City vs. Lorber*, 64 Mo. App. 1. c. 608, the court discussing the word "merchant" defines it as follows:

"The term 'merchant' has been defined to be strictly a buyer, but by extension, one who buys to sell, or buys and sells; one who deals in the purchase of goods; a dealer in merchandise; a trader, Kinney's Law Dict. & Glos. 459. One who buys to sell again and who does both, not occasionally, but habitually, as a business; one who buys and sells an article. Anderson's Law. Dict. 671. One who is engaged in the business of buying commercial commodities and selling them again for the sake of profit."

Again, at page 609, the court further said:

"The word merchant, * * * * we think comprehends the various kinds of merchants. If one is a dealer in any article or commodity, that is to say, is engaged in buying and selling the same, for profit, he is a merchant."

In the case of the *City of Ozark vs. Hammond*, 49 S. W. (2nd) 1. c. 131, the court defined the word "merchant" as follows:

"A merchant is one who is engaged in the purchase and sale of goods; a trafficker; a trader."

In the case of in re Ah Yow, 59 Federal Reporter, l. c. 562, the court had before it for consideration as to whether a Chinese person engaged in that business was privileged to enter the United States as a merchant. In defining the term "restaurant keeper" the court said:

"A restaurant keeper is a caterer, who keeps a place for serving meals, and provides, prepares, and cooks raw materials to suit the tastes of his patrons. A person in that business is not a merchant, * * *".

It is to be noticed from the above cases that the word "merchant" in its common acceptation comprehends anyone who buys, sells or deals in commodities with a view of earning a profit. Applying this definition to one who prepares and serves meals in a dining room in connection with a hotel, can it be said that the term "merchant", as used in the statute, was intended to include one who pursued that calling? We think not. Even though the restaurateur necessarily buys various commodities such as goods, wares and merchandise, all of which goes into the preparation of a meal, it does not follow that such is his occupation so as to make him subject to the provisions of Section 10075.

It is also to be noted that the statute uses the words "to deal in the selling of goods, wares and merchandise". This contemplates bartering and trafficking such as is not true in the preparation and sale of meals.

CONCLUSION

It is the opinion of this department that a person preparing and selling meals in a dining room in connection with a hotel is not a merchant.

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

J. E. Tabor
(Acting) Attorney General