

PEDDLERS:) Merchant who takes merchandise from one farm sale
) to another to sell at auction must have peddler's
LICENSE:) license.

May 10, 1937.

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Honorable Richard H. Musser
Prosecuting Attorney
Johnson County
Warrensburg, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of recent date in which you request the opinion of this Department on the facts stated therein. Your letter is as follows:

"Dixon Brothers of Carolton, Missouri, dealers in harness, have been operating in this County by going to various sales and putting up their harness for auction along with the commodities the farmer having the sale is selling.

"At One such sale here the harness was put up and bid in for \$34.50 but Mr. Dixon refused to let it be sold for a lower bid than \$36.00, stating at the time he would not let it be sold unless \$36.00 was bid. He has been causing considerable disturbance in this County among hardware merchants and harness dealers because of his method of operation.

"He claims to have an opinion from your office stating that he is permitted to carry on business in this manner without taking out license in each County wherein he operates. His method of operating is to send a light pick-up truck to the sale, loaded with collars, halters, sets of harness and other incidental articles. His employee who attends the truck has been charged with selling direct from the truck but we have no definite proof of that, however, near the end of the sale he puts the harness up for auction, as mentioned above.

"Will you please tell me, first, did you give these gentlemen any opinion approving their methods and stating that they could operate in this manner without a pedlers license? If so, may I have a copy of same? Second, Do you not believe the proper charge would be based on failure to procure a peddlers' license."

The statutes of Missouri have undertaken to regulate the selling of certain goods, wares and merchandise in this State and require a license to be taken out by the sellers, namely, merchants, itinerant vendors and peddlers. There are three separate and distinct classes defined by the statute: merchant, itinerant vendor, and peddler, and by your question you asked us whether or not the facts, as set forth in your letter, bring the seller mentioned therein within the classification of a peddler or either of the other classifications defined in the statute.

A "merchant" is defined by Section 10075, R. S. Mo. 1929, in the following language:

"Every person, corporation or copartnership of persons, who shall 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." (italics ours.)

No doubt, the persons mentioned in your letter have a merchant's license to sell goods, wares and merchandise in their store, stand or place in Carrollton, Missouri. The fact that they have a merchant's license does not, in our opinion, give them authority to sell goods, wares or merchandise away from their store by peddling same from place to place or house to house at other places in the State.

An "itinerant vendor" is defined by Section 10103, R. S. Mo., 1929, 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."

We do not believe that the description of the transactions as set forth in your letter makes them an itinerant vendor within the meaning of the statute.

The remaining classification of a seller of goods, wares and merchandise is defined in Section 13312, R. S. Mo. 1929, as a "peddler" and is 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."

The question is whether or not these dealers come within the definition of a "peddler" requiring them to secure a peddler's license under the provisions of Chapter 96, R. S. Mo. 1929. Since

a peddler is defined by the statute it then becomes a question as to whether the dealers mentioned in your letter come within the meaning of this statute.

In 29 Corpus Juris, p. 219, it is said:

"To constitute one a peddler he should have no fixed place of dealing but travel around from place to place, or from house to house; he should carry his wares with him, and expose them for sale, and not merely carry and show samples of them; he should sell them at the time he offers them, and not merely enter into an executory contract for a future sale; he should deliver them then and there, and not merely contract to deliver them in the future; the sales made by him should be at retail, to consumers, and not confined exclusively to dealers in the articles sold by him."

The sellers of merchandise, according to your letter, can be said to have no fixed place of dealing (as to the sales mentioned in your letter) and they do travel around from place to place to sell their harness; they carry their wares with them, and expose them for sale; they sell them at the time they are offered and deliver them at the time of the sales; the sales are made at retail and are made to consumers. We do not think that for an isolated sale or an occasional sale the persons mentioned in your letter would be required to take out a peddler's license, but if it is a continuous practice over a period of time by going from sale to sale over an extended territory they would be required to take out a peddler's license. It is the practice rather than a sporadic act of peddling that the law regards. The fact that the harness is put up at auction at a sale does not change, in our opinion, their status but brings them within the definition of a peddler as set forth in the statute above and the definition as given in Corpus Juris, supra. If the rule were otherwise any person could load his truck or other vehicle with thousands of dollars of merchandise and move from sale to sale throughout the State without paying any license whatsoever to the state or county and thereby defeat the purposes of the statute and thereby be in competition with the legitimate merchant having a fixed place of doing business and paying a license and taxes in support of the government.

Hon. Richard H. Musser

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May 10, 1937.

It is, therefore, our opinion that the persons mentioned in your letter come within the definition of a "peddler" as defined by the statutes, and required to secure a license as required by Chapter 96, R. S. Mo. 1929.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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