

PEDDLERS:

What constitutes selling as a peddler
so as to require license as such.

August 18, 1938



Honorable Harry McGee,
State Representative,
Warren County,
Warrenton, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of August 15, 1938, requesting an opinion on the following:

An oil distribution company has a bulk plant located within an incorporated city. The company pays a merchant's license and property taxes. It has an employee distributing its products throughout the county. Is this type of business that of a peddler?

For the purpose of this opinion we are assuming that it is the county peddler's license to which you have reference and whether a company engaged in this business, in the manner outlined, must obtain a county license to peddle.

Section 13312, R. S. Mo. 1929, from which we have deleted inapplicable provisions, is 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."

In *City of Aurora v. Stafford*, 51 S. W. (2d) 547, the Springfield Court of Appeals interpreted the meaning of this statute. What is said in that case we think is decisive of the question before us here.

The Stafford case was one which involved the construction to be placed on an ordinance of the City of Aurora which was substantially the same as the above statute. The defendant in said case was the agent of a bakery located in Springfield, Missouri. This agent was engaged in driving a truck for the bakery and selling and delivering to regular customers of said bakery in Aurora its products. The truck was loaded in Springfield, driven to Aurora where the driver contacted the regular customers, ascertained what they wanted and supplied them. No sales were made direct to the consumer. The bakery confined its sales to wholesale distribution to merchants for resale.

In passing on this case the court said at l. c. page 548:

"* * * 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.
* * * "

Following this the court cited a number of cases bearing on the question, and went on to say concerning them that:

"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

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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 are not advised by your letter in just what way this oil company operates with respect to any previous agreement to sell to a particular person or whether the parties with whom it deals are its regular customers. Because of this failure we cannot undertake to say whether or not it is a peddler. However, if its manner of operation brings it within our holding here it is not subject to pay a county peddler's license.

CONCLUSION

Therefore, it is our opinion that if an oil distribution company distributes and sells its products to retail merchants who are its regular customers it 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." Nor is it a peddler if a previous agreement relative to said sales was entered into.

Respectfully submitted,

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APPROVED:

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