

PEDDLERS: Trucks selling groceries from house to house to individuals, deemed peddlers; if orders are taken and goods delivered later they are not peddlers.

January 31, 1939



Honorable Donald B. Dawson  
Prosecuting Attorney  
Bates County  
Butler, Missouri

Dear Sir:

This office is in receipt of your letter of January 16th, wherein you make the following request:

"I would like to request your opinion on the provisions of Chapter 96, Revised Statutes of Missouri for 1929, pertaining to peddlers and the license required of one who operates as a peddler. A number of merchants here in Bates County have complained that two or three concerns operating in an adjoining county are sending grocery trucks over here into Bates County and selling to the farmers on a regularly established daily route. I wrote to two of the concerns complained of and talked with some of the parties today in my office. The officials of the concern I talked with stated that they were engaged in operating a truck and in the selling of general grocery supplies and general merchandise over regular routes running throughout the country in Bates and surrounding counties. This truck operates on a regular route each day and the sales are made to any party who wants to buy. Also, the operators of trucks

are authorized to take orders for future delivery. The orders are, of course, filled by the parent store which is located in Archie, Missouri. This concern that I talked with took the position that the peddlers law in the state is a very old and obsolete enactment and in view of the modern conditions pertaining to the selling of merchandise from trucks and in view of the wide spreading use of this method of selling the law was no longer in effect. One of the officials of the concern informed me that he had been in Jefferson City and had found that it was not necessary to secure a peddlers license. In order to clear this matter up, I felt it advisable to ask your opinion on Chapter 96.

"You can readily understand the objections which are made by Bates County merchants to a concern which has its place of business in Cass County and comes into Bates and sells to the farmers who should be spending their money here in Bates County. A large number of smaller grocery stores are unable, financially to operate a fleet of trucks and yet are absolutely dependent upon the farmers in their trade territory. When these Cass County trucks are able to sell the farmers all of their grocery supplies and when they come on regular days and carry a complete line of groceries it makes it very difficult for the Bates County merchants to compete with them.

"I have taken the position that the provisions of Chapter 96 are still good

law and that any concern who sells groceries and other merchandise throughout the country is liable to pay a peddlers license."

For convenience we have quoted your letter in full.

On May 10, 1937, this Department rendered an opinion to Honorable Richard H. Musser, Prosecuting Attorney of Johnson County. A copy of said opinion is enclosed for the reason that it contains many citations with reference to "peddlers," "itinerant merchants" and others, which makes it unnecessary to requote the same in this opinion to you.

Your question relates to the construction of Section 13312, R. S. Mo. 1929, which 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, cheese, by going about from place to place to sell the same, is declared to be a peddler."

Applying this section to the facts: "A number of merchants here in Bates County have complained that two or three concerns operating in an adjoining county are sending grocery trucks over here into Bates County and selling to the farmers on a regularly established daily route.", we assume that they are selling to the farmers, groceries which would be termed under the statute as "wares or merchandise." This manner of operating appears to be clearly within the statute, and as stated in State v. Holmes, 62 Mo. App. 178, wherein the court said:

"One who goes from place to place and sells kitchen cabinets (merchandise) which are manufactured by him in this State, is a peddler and is required to have a license."

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Therefore, we think the action of the grocery trucks constitutes them peddlers within the meaning of the statute.

With reference to that portion of your letter which states:

"Also, the operators of trucks are authorized to take orders for future delivery. The orders are, of course, filled by the parent store which is located in Archie, Missouri."

it was held in the case of State v. Hoffman, 50 Mo. App. 585, that orders taken from samples and later the goods are made up according to the samples and sent or shipped to the customer, that the same does not constitute peddling.

We are, therefore, of the opinion that if only orders are taken by the grocery trucks and the groceries delivered later, that the same does not constitute peddling within the meaning of Section 13312, supra. We agree with your statement that the provisions of Chapter 96, R. S. Mo. 1929, are still in full force and effect and it was the purpose of the chapter and the statutes thereunder to regulate peddling in the State of Missouri, and we know of no later statute which makes said chapter obsolete or in anywise cause the officials of the county to disregard the enforcement of same.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney-General

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APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney-General