

TAXATION: Merchants who do not file bond and do not obtain a merchant's license may be subject to forfeiture action under Section 10076, R. S. Missouri, 1929.

December 22nd, 1939



Hon. George O. Dalton  
Collector of Marion County  
Hannibal, Missouri

Dear Sir:

We are in receipt of your request for an opinion, dated December 16, 1939, which reads as follows:

"On December 31, 1939, the time will have expired for Merchants and manufacturers to pay their ad valorem tax. I was unable to receive a bond or the cash payment of their ad valorem tax before it was due from some 75 merchants.

"I am at a loss to know how I will proceed to collect this tax. Under the law it is not supposed to go delinquent, and I am to file suit against the principal and sureties on the bond, but the ones I was unable to get a bond from, I would like to know how to proceed, and what penalty I can charge the merchant, if any, and what attorney fee I would be permitted to charge the merchant, and turn it over to the attorney to file suit?"

Laws of Missouri, 1935, page 407, Section 10078, reads as follows:

"Any person, corporation or copartnership of persons applying for a license to vend merchandise shall, before he or they shall receive such license, execute a bond to the state, with good and sufficient surety, conditioned that he will, on or before the first day of January next following, pay to the collector of the proper county the tax due upon such license; which bond shall be approved by the collector, and his approval indorsed thereon."

Section 10080, R. S. Missouri, 1929, shows the form of bond that is required before a license can be issued to a merchant.

Section 10076, R. S. Missouri, 1929, reads as follows:

"No person, corporation or copartnership of persons shall deal as a merchant without a license first obtained according to law; and every person so offending shall forfeit to the state not less than fifty nor more than five thousand dollars for every such offense, to be recovered by indictment or information."

Under the above section a penalty may be recovered by indictment or information which shall be filed by the prosecuting attorney of the county. This section does not provide for an attorney's fee, but only for a forfeiture for the state.

Under Section 10084, R. S. Missouri, 1929, the clerk is directed to issue a license form therein contained, and under Section 10085, R. S. Missouri, 1929, is directed that the clerk shall deliver to the collector of his county all licenses so issued and charge him therewith in a book to be kept for that purpose.

Under Section 10086, R. S. Missouri, 1929, the Collector is authorized to receive the sum of fifty cents (50¢) for issuing the license and twenty-five cents (25¢) for issuing bond and statement to be retained by the Collector as his fee.

Under Section 10087, R. S. Missouri, 1929, it provides for the forfeiture of the bond where the merchant has not paid the amount of taxes. It also provides for the forfeiture of the bond.

Under Section 10088, R. S. Missouri, 1929, it provided that after the bond has been forfeited, a suit shall be brought and judgment shall be rendered against the merchants for three times the amount of revenue which shall be found to be due for the year including the costs.

According to your request you state that you were unable to receive a bond or a cash payment of the ad valorem tax before it was due. I am assuming that the 75 merchants did not receive the license as set out in Section 10084, supra. I make this assumption for the reason that the collector could not deliver such a license without first having a bond on record in his office.

Under Section 10079, R. S. Missouri, 1929, a Collector who shall fail to require a bond before issuing a license shall be deemed guilty of a misdemeanor.

Hon. George O. Dalton

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December 22, 1939

CONCLUSION

In view of the above authorities it is the opinion of this Department that since no bond has been filed in the office of the Collector, the only suit that can be filed is a proceeding by way of indictment and information under Section 10076, supra, which provides for a forfeiture from any person, corporation or copartnership of persons who shall deal as a merchant without a license first obtained according to law. The forfeiture is not less than Fifty (\$50.00) Dollars, nor more than Five Thousand (\$5,000.00) Dollars for every such offense.

It is further the opinion of this Department that since the 75 merchants did not file a bond according to law, the only procedure that can be followed by the Collector of Marion County is the procedure set out in Section 10076, R. S. Missouri, 1929.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

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TYRE W. BURTON  
(Acting) Attorney General

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