SEEDSMAN'S LICENSES: Manager of a "Community Sale" who sells for a farmer seeds grown by the farmer is not required to have a seedsman's license.

April 27, 1942

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Hon. D. D. Thomas, Jr.
Prosecuting Attorney
Carroll County
Carrollton, Missouri

Dear Sir:

We have for answer your opinion request of April 15, 1942, which is as follows:

"Request is respectfully made for your opinion upon the following:

"Is the manager of a 'community sale', who auctions agricultural seeds for a farmer and who receives a commission for such sale and who does not have a permit violating Section 14,267 of the Revised Statutes for 1939?

"The facts upon which this question is asked are as follows: A, who is a farmer, producing agricultural seeds, but not primarily engaged in such production takes the seeds to the community sale. He retains the right to withdraw the seeds from the sale at any time. The auctioneer, after the sale is made deducts his commission or selling charge and the balance goes to the farmer.

"Under the statute the farmer may sell the seeds without first securing a permit. Is there such a distinction between that method of sale and having the auctioneer sell it, as to require the auctioneer to have a permit?"

Section 14267, R. S. Mo., 1939, provides that anyone selling seeds as defined in the law shall obtain a license therefor. That section is as follows:

> "It shall be unlawful for any seedsman to sell, distribute, offer or expose for sale or distribution in this state, any agricultural seed or mixture thereof, or vegetable seed as defined in this law, without first securing a permit approved by the department of agriculture, which permit shall be issued annually by the department of agriculture upon the payment of an annual fee of one dollar. Such permit shall expire December 31st of each year. All permit fees paid to the department under this law, shall be deposited in the state treasury to the credit of the agricultural fees fund, subject to appropriation by the general assembly: Provided, however, that the term seedsman as used in this section shall be defined as a person, firm or corporation engaged in the buying, selling, exchange, offering or exposing for sale of agricultural seeds or mixture thereof, or vegetable seeds as defined in this law; and the said term seedsman shall not apply to a farmer selling agricultrual seeds of his own production, the production of which agricultrual seeds is not a primary endeavor, and primary source of income to said farmer; nor shall the term seedsman apply to a person, firm or corporation,

> or cooperative association doing a local or retail business in the state of Missouri, provided said seed bears the label and permit number of a seedsman." (Underscoring ours)

The law is well settled in this state that where a statute is plain and unambiguous it is not necessary to place a construction upon it. It is only necessary to take the obvious intent of the Legislature and act in accordance therewith. In State v. Keller, reported in 137 S. W. (2d) 989, l.c. 990, the court said:

> " * * * * In construing this statute the following well established rule should be kept in mind: Where the language of a statute is plain and unambiguous nothing contrary to the evident intent can be implied. State ex rel. Jacobsmeyer v. Thatcher, 338 Mo. 622, 92 S. W. 2d 640. A statute should be so construed as to give effect to the legislative intent. State ex rel. Wabash R. Co. v. Shain, 341 Mo. 19, 106 S. W. 2d 898. A statute that is clear in its terms and leaves no room for construction must be enforced as written. Dahlin v. Missouri Commission for Blind, Mo. App., 262 S. W. 420.* * * * "

In the case of Fichtner v. Mohr, reported in 16 S. W. (2d) 739 l.c. 741, the court said as follows:

> " * * * * * We are bound to ascertain and give effect to the intention of the Legislature as expressed in the statute, and, where the language used is plain, it must be given effect by the courts. * * * "

In the case of Cummins v. Kansas City Public Service Co. 66 S. W. (2d) 921 l. c. 925, the court said as follows:

> " * * * * The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, and 'the manifest purpose of the statute, considered historically', is properly given consideration. See Grier and Meyering Cases; 2 Lewis, Sutherland on Stat. Const. (2d Ed.) section 363; Endlich on Interpretation of Statutes, section 329; and Maxwell on Statutes (5th Ed.) 425. * * * * "

In 36 Cyc. 1106, it is said as follows:

> " * * * * The great fundamental rule in construing statutes is to ascertain and give effect to the intention of the Legislature. This intention, however, must be the intention as expressed in the statute, and where the meaning of the language used is plain, it must be given effect by the courts, or they would be assuming legislative authority. * *"

In the primary analysis we must accept the definition of a seedsman as set out in the statute. The statute makes two exceptions in the definition of a seedsman: one of which is that the term "seedsman" shall not apply to a farmer selling agricultural seeds

of his own production, the production of which agricultural seeds is not a primary endeavor and primary source of income to said farmer; and the second exception is that the term "seedsman" shall not apply to a person, firm, or corporation or cooperative association doing a local or retail business in the State of Missouri if the seeds sold at such sale bear the label and permit number of the seedsman. This section is not ambiguous, and very plain in its meaning.

Our understanding of a "Community Sale" is a sale where a person brings anything he wishes to sell and the auctioneer asks for bids. The merchandize brought to the sale is sold to the highest bidder. The person bringing the merchandize for sale has a right to accept or refuse the bid offered. It then becomes a question of agency. The law has been long settled that an auctioneer is both the agent of the seller and the buyer. He is the agent of the seller when he makes the sale, and when the bid is accepted he then becomes the agent of the buyer.

A manager of a "Community Sale" as we understand it provides the place or barn where the sale is conducted. He hires an auctioneer who conducts the sale and is paid by the manager for his services. In other words the farmer designates the manager of the "Community Sale" as his agent and the auctioneer who sells the merchandize is the sub-agent of the manager of the sale.

A further reading of the statute shows that irregardless of the fact that the manager of the "Community Sale" might be selling products of a "seedsman", the seeds so sold would have to be labeled and the manager of the

"Community Sale" would then become the agent of the "seedsman" and would not have to purchase a license as provided in the statute.

CONCLUSION

It is, therefore, the opinion of this office that a manager of a "Community Sale", who sells seed either at a local sale or at retail for a farmer whose primary endeavor and primary source of income is not the production of agricultural seeds, does not have to purchase a license as provided for in Section 14237, R. S. Mo., 1939.

Respectfully submitted,

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APPROVED:

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