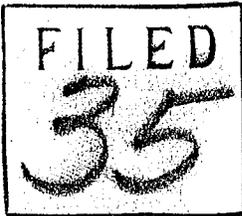


ITINERANT VENDORS: An itinerant vendor within the meaning of
AUCTIONEERS: Section 150.380 et seq. who is selling his
wares at public auction and is actually
crying the sale must be licensed both as
an itinerant vendor and as a public
auctioneer.

May 20, 1954



Honorable Philip A. Grimes
Prosecuting Attorney
Boone County Courthouse
Columbia, Missouri

Dear Sir:

By letter dated May 10, 1954, you requested an official
opinion as follows:

"Recently, some individuals and companies,
both residents of Missouri and non-residents,
have been conducting public auctions about
this county, whereby they propose to sell
new but second class or rejected merchandise
such as vacuum cleaners, lamps, irons, sporting
goods and other items too numerous to mention.
It is the practice to advertise such sales
with the name of a local auctioneer. This
auctioneer then cries the sale, which may be
conducted at a local sales barn or similar
place.

"The local retail merchants are complaining
because the above mentioned business is not
taxable locally and they feel it is there-
fore unfair competition.

"In checking one such sales organization I
found it to be an Illinois corporation which
had been duly licensed under the Itinerant *rant*
Vendors Section under the statutes 150.380 to
150.460. I believe the sales tax is still
applicable under this section. I find, how-
ever, that the local auctioneer, over who's

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name the sale was advertised, does not have a public auctioneer's license as provided in chapter 343 of the statutes. I find further that none of the servants, agents or employees of the Illinois corporation who incidently assisted the local auctioneer in crying the sale, were so licensed as public auctioneers.

"My question is, assuming that all the provisions of the itinerant vendors statutes have been complied with, is it necessary that the auctioneers be licensed under chapter 343? This question covers both auctioneers, the local auctioneer who cries the sale for a percentage and the company auctioneer who cries it as a part of his employment."

All statutes cited herein are RSMo 1949.

"Itinerant vendor" is defined by Section 150.380 as follows:

"1. The words 'itinerant vendor,' for the purposes of sections 150.380 to 150.460, 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.

"2. The provisions of sections 150.380 to 150.460 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,

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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."

An itinerant vendor is required by Section 150.390 to be licensed.

"1. An itinerant vendor, whether principal or agent, before beginning business, shall take out state and local licenses in the manner herein set forth, but the right of a municipal corporation to pass such additional ordinances relative to itinerant vendors, as may be permissible under the general law, or under its charter, shall not be affected.

"2. Every itinerant vendor desiring to do business in this state shall deposit with the state collector of revenue the sum of five hundred dollars as a special deposit, and thereafter, upon application in proper form, and the payment of a further sum of twenty-five dollars, as a state license fee, such state collector of revenue shall issue to him an itinerant vendor's license, authorizing him to do business in this state, in conformity with the provisions of sections 150.380 to 150.460, for one year from the date thereof."

* * *

The deposit required by the above Section is made subject to claims presented against it by Section 150.440.

"Each deposit so made with the state collector of revenue, shall be subject to attachment and execution on behalf of creditors, whose claims arise in connection with business done in this

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state, and to the payment of fines and penalties incurred by the licensee, through violation of sections 150.380 to 150.460. Claims under civil process shall be enforced against the state collector of revenue as garnishee, or trustee by action in the usual form, and claims for satisfaction of fines and penalties shall be enforced by the prosecuting attorney serving notice of pendency of action and judgment when obtained upon the state collector of revenue. Claims upon each deposit shall be satisfied after judgment, in the order in which notice of the claim is received by the state collector of revenue, until such claims are satisfied, or the deposit exhausted; but notices filed after the expiration of such sixty days' limit shall not be valid. A deposit shall not be paid by the state collector of revenue to licensees as long as there are outstanding claims or notices of claims against it, unless there is unreasonable delay in enforcing them."

An itinerant vendor is required by Section 150.420 to make certain statements in some instances before he is allowed to sell certain types of goods.

"An itinerant vendor shall not advertise, represent or hold forth a sale of goods, wares or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver, wholesale, manufacturers' wholesale, or closing out sale, or as a sale of any goods damaged by smoke, fire, water, or otherwise, unless before so doing he shall state, under oath, to the state collector of revenue, either in the original application for a state license, or under a supplementary application subsequently filed and copied on the license, all the facts relating to the

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reasons and character of such special sale so advertised, held forth, or represented, including a statement of the names of the persons from whom the said goods, wares or merchandise were obtained, the date of delivery of the same to the persons applying for the license, the place from which said goods, wares and merchandise were last taken, and all details necessary to exactly locate and fully identify all goods, wares and merchandise to be sold."

The above statutes indicate that the Legislature in enacting them had in mind the protection of the public from persons who because of their itinerant character are in a position to defraud the public and leave the locality before such fraud is discovered or action can be taken thereon.

Auctioneers are required by Section 343.010 to be licensed.

"No person shall exercise the trade or business of a public auctioneer by selling any goods or other property subject to duty under this chapter, or real estate, without a license."

A license fee is imposed by Section 343.080.

"There shall be levied upon every license, to be paid to the collector before the delivery thereof, as follows:

"(1) On each license for ten days, ten dollars;

"(2) On each license for one month, twenty-five dollars;

"(3) On each license for three months, fifty dollars;

"(4) On each license for six months, seventy-five dollars."

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There is imposed upon sales at auctions a duty payable to the state. That duty is imposed by Section 343.130.

"There shall be levied and paid upon the proceeds of the sales of all property at auction, except as herein excepted, a duty to the state on the proceeds of all sales of personal property, except corporation stocks, one and a half per cent."

The exceptions referred to are made by Section 343.160:

"Sales of property at auction shall be free of duty in the following cases:

"(1) When directed by any statute of this state or of the United States;

"(2) In executing any order, judgment or decree of any court or magistrate of this state or any court of the United States, in case of bankruptcy or insolvency, pursuant to any law of this state or of the United States;

"(3) When sold by any trustee in conformity to a deed of trust to secure the payment of debts;

"(4) Property of deceased persons sold by authority of executors or administrators;

"(5) Boats, vessels, rafts, lumber and other property wrecked, stranded or found adrift in any of the waters of or adjoining this state;

"(6) Live stock, agricultural productions, farming utensils and household and kitchen furniture sold in the county of the owner's residence;

"(7) Land or leasehold interest therein;

"(8) Each licensed merchant shall have the privilege of selling off, at auction,

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at the end of every twelve months after the commencement of his business, any refused stock of goods which he may have had on hand for six months preceding, without obtaining an auctioneer's license for that purpose."

Auctioneers are required by Section 343.110 to give a bond.

"Before any license shall be granted, the applicant shall give bond to the state of Missouri in a sum not exceeding three thousand dollars nor less than five hundred dollars, with one or more sufficient sureties, residents of the county, the amount of the bond and the sufficiency of the security to be determined by the collector, with condition that he will on the first Mondays of February, May, August and November in each year, while he shall continue the business of auctioneer, render to the clerk of the county court a true and particular account, in writing of the aggregate amount in money of all property subject to duty by this law, sold by him at auction, or sold at his auction store or rooms at private sale, that is to say: First, from the date of the bond until such of the aforesaid days as shall ensue next thereafter, and thenceforth from the day to which any account shall last have been rendered, until such of the said days as shall next thereafter ensue, and so on in succession, from one of the said days to another so long as he shall continue to exercise the calling of an auctioneer; and also, shall pay all such sums of money as shall be due to the state upon such sales to the collector of the proper county; and the bond shall be filed in the office of the clerk of the county court."

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Auctioneers are required by Section 343.170 to pay to the collectors of the proper counties the duties imposed by Section 343.130 and are required by Section 343.180 to render under oath to the Clerk of the County Court of the respective county in which they transact business, an account of the sales made by them subject to duty under this chapter.

It is apparent from the above statutes that the purpose of licensing auctioneers is not the protection of the buying or selling public from unscrupulous or incompetent auctioneers, since there are no professional requirements except payment of the license fee. Instead, the purpose of the chapter is to impose a duty upon sales made at auctions, and the auctioneers are required to be licensed and to post bond to insure that the duty owing to the state will be paid.

Thus, the purpose of Section 150.380 et. seq. and the purpose of Chapter 343 are entirely unrelated. We can discover no reason why the licenses required thereunder are exclusive of each other. If a person is both an itinerant vendor and engaging in auctioneering, he should be required to be licensed for both purposes.

You mention that some non-residents may have been acting as auctioneers. Your attention is invited to Section 343.100 which makes the following residence requirement for public auctioneers.

"No person shall be permitted to sell property at auction of any kind unless he shall have resided in this state six months next preceding the time of making application for license."

Enclosed is a previous opinion of this office rendered on December 22, 1933, to Honorable N. R. Aldrich, concerning the licensing of non-resident auctioneers.

CONCLUSION

It is, therefore, the opinion of this office that an itinerant vendor within the meaning of Sections 150.380 et seq., RSMo 1949, who is selling goods at public auction,

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subject to duty under Chapter 343, RSMo 1949, and is actually crying the sale, must be licensed both as an itinerant vendor and as a public auctioneer.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

Enclosure - 12-22-33 to N. R. Aldrich

PMcG:ld,lw