

CITIES, TOWNS AND VILLAGES:
LICENSE: MERCHANTS:

City of third class does not
have power to exact license
fee from nurseryman.



June 1, 1954

Honorable George A. Spencer
Member, Missouri State Senate
Columbia, Missouri

Dear Sir:

Reference is made to your request for an official
opinion of this department which may be summarized in the
following language:

"Does a city of the third class have the
right to require a person who sells
nursery plants from an established place
of business to buy a city license?"

"The seller is not a peddler of plants,
but maintains a place where people may
purchase the plants."

You have supplied us also with the following additional
information.

"* * * However, the ones I am interested
in are those who raise practically all
of the merchandise they sell. I don't
suppose that any regular nursery men
raise every particular species of every
kind of plant but most of the larger
nursery men do raise practically all of
their stock. That is the case in this
instance. * * *"

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Your attention is first directed to Section 71.610, RSMo 1949, reading as follows:

"No municipal corporation in this state shall have the power to impose a license tax upon any business avocation, pursuit or calling, unless such business avocation, pursuit or calling is specially named as taxable in the charter of such municipal corporation, or unless such power be conferred by statute."

From the foregoing it becomes apparent that it is necessary to examine statutes relating to the licensing power of cities of third class. We find that the power to impose such license tax has been conferred upon such cities under the provisions of Section 94.110, RSMo 1949, which reads in part as follows:

"The council shall have power and authority to levy and collect a license tax on wholesale houses, auctioneers, architects, druggists, grocers, banks, brokers, wholesale merchants, merchants of all kinds, confectioners, * * * nursery stock agents, * * * and all other vocations and business whatsoever, and all others pursuing like occupations."

The enumerated businesses are the only ones appearing in the statute, which is quite lengthy, that could conceivably refer to the operations conducted by the business houses as to which you have inquired.

The term "merchant" as used in statutes relating to the power of cities to impose license taxes has been defined by the Supreme Court of Missouri. The following appears in *Viquesney v. Kansas City*, 266 S. W. 700, l.c. 702:

"Appellant calls attention to section 8702, R. S. 1919, which provides that no municipal corporation shall have the power to impose a license tax upon

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any business, avocation, etc., unless such business, avocation, etc., is specifically named as taxable in the charter of such municipality. Section 1, art. 3, cl. 4, of the charter, enumerates 'merchants' among others who may be taxed and regulated. The dictionary definition of 'merchant' is: 'One making a business of buying and selling commodities; a trafficker; a trader.' Secondary meaning: 'One who carries on a retail business.' * * *

To the same effect see Village of Beverly Hills v. Schuller, 130 S. W. (2d) 532. In view of the information supplied this office to the effect that the businesses under consideration involve the growing and sale of nursery stock, it appears that such business operations are not comprehended within the definition of the term "merchant" as used in the license tax statutes.

Neither do we believe that such operations are such as to constitute the proprietors thereof "nursery agents." It is common knowledge that an "agent" is one who does and performs services or conducts business on behalf of a principal. It does not appear that the proprietors of the businesses under consideration acted in such capacity and we therefore conclude they are not "nursery agents."

CONCLUSION

In the premises we are of the opinion that a person whose business consists of the growing of nursery stock and the sale thereof, at an established place of business, is not engaged in any of the operations enumerated in Section 94.110, RSMo 1949, upon which a city of the third class may levy a municipal license tax.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

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