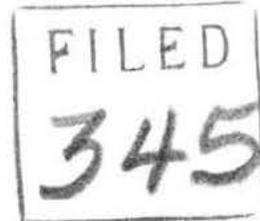


October 26, 1965



Honorable John L. Woodward
Prosecuting Attorney
Crawford County
Steelville, Missouri

Dear Mr. Woodward:

This is in answer to your request for an opinion which reads as follows:

"Will you please advise me whether or not it is your opinion that R.S.Mo 563.721 would prohibit the sale at auction of household furnishings, appliances and other items ordinarily found in the home, if such sale was held at the residence of the owner, on Sunday?"

The applicable parts of Section 563.721, RSMo Cum Supp 1963, read as follows:

"1. Whoever engages on Sunday in the business of selling or sells or offers for sale on such day, at retail, motor vehicles; clothing and wearing apparel; clothing accessories; furniture; housewares; home, business or office furnishings; household, business or office appliances; hardware; tools; paints; building and lumber supply materials; jewelry; silverware; watches; clocks; luggage; musical instruments and recordings or toys; excluding novelties and souvenirs; is guilty of a misdemeanor and shall upon conviction for the first offense be sentenced to pay a fine of not exceeding one hundred dollars, and for the second or any subsequent offense be sentenced to pay a fine of not exceeding two hundred dollars or undergo confinement not exceeding thirty days in the county jail in default thereof.

Honorable John L. Woodward

"2. Each separate sale or offer to sell shall constitute a separate offense."

Generally, in construing statutes, the legislative intent should be ascertained from the words used, if possible, and in doing so give to such words their plain and ordinary meanings so as to promote the object and manifest purpose of the statute. Baker v. Brown's Estate, 365 Mo. 1159, 294 S.W. 2d 22.

It is plain from the statute that retail sales on Sunday of certain prescribed goods are prohibited.

Retail is defined by Black's Law Dictionary, 4th Edition, as follows:

"To sell by small quantities, in broken lots or parcels, not in bulk, to sell direct to consumer."

Auction is defined by Black's Law Dictionary, 4th Edition as:

"A public sale of land or goods, at public outcry, to the highest bidder."

It is our opinion that the auction described in your letter is a sale at retail prohibited by the statute if the statute applies to a homeowner making the sale.

The statute uses the word "or" when naming those persons covered by the statute. Ordinarily the use of the word "or" is meant to be in the disjunctive. Norberg, v. Montgomery, 351 Mo. 180, 173 S.W. 2d 387.

It is our opinion that any person who sells the listed items at retail on Sunday violates the statute, regardless of whether that person is ordinarily in the retail business or just makes one sale. Subsection 2 of the statute bears this out by making each separate sale a separate offense.

Very truly yours,

NORMAN H. ANDERSON
Attorney General