

AUCTIONEERS: Person selling at auction at community
COMMUNITY SALES: sales barn required to have auctioneer's
license.

May 12, 1949

Hon. William Lee Dodd
Prosecuting Attorney
Ripley County
Doniphan, Missouri



Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Sections 14912-14936, Revised Statutes of Mo. 1939, regulate auctioneers. We have one auctioneer in our county who auctioneers at a community sales barn every Thursday. At this sale he sells livestock coming from surrounding counties and sold in Ripley County, not the county of the owner's residence. He also sells livestock from this county as well. Do Sections 14912, 14924 and 14927 require the said auctioneer to have a license? Does the exception in Section 14927, i.e., sixth, mean that since he sells livestock from counties of owners not resident in this county, that he must have a license? Does the fact that he auctioneers at a community sale barn exempt him from a license requirement?"

The licensing of auctioneers is provided by Chapter 116, R. S. Mo. 1939, Sections 14912-14936. Section 14912 provides:

"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."

Sections 14914 to 14918 provide generally for the issuance of licenses.

Section 14919 provides the fees for licenses ranging from \$10.00 for ten days to \$75.00 for six months.

Section 14922 requires an applicant for an auctioneer's license to give a bond, conditioned upon the payment of all duty payable on property sold by him.

Section 14923 provides:

"Any licensed auctioneer may sell or retail goods at his auction store or rooms, so long as he continues the business of an auctioneer, without a license as vendor of merchandise, so that he render a true account of the sales and pay the like duty thereon as if such sales were made at auction."

Section 14924 provides:

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

Section 14927 provides:

"Sales of property at auction shall be free of duty in the following cases: First, when directed by any statute of this state or of the United States; second, in executing any order, judgment or decree of any court or justice of the peace 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; third, when sold by any trustee in conformity to a deed of trust to secure the payment of debts; fourth, property of deceased

persons sold by authority of executors or administrators; fifth, boats, vessels, rafts, lumber and other property wrecked, stranded or found adrift in any of the waters of or adjoining this state; sixth, live stock, agricultural productions, farming utensils and household and kitchen furniture sold in the county of the owner's residence; seventh, land or leasehold interest therein; eighth, each licensed merchant shall have the privilege of selling off, at auction, 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."

Sections 14928 to 14936 relate to payment of duty and enforcement of the act.

Thus, it appears that licensing of auctioneers is, generally speaking, a matter related to the collection of revenue.

The Community Sales Law is found in Laws of Missouri, 1943, at page 310. Section 2(d) of the act contains the following definition:

"The term 'community sales' means any series of sales, exchanges, or purchases of any livestock made at regular or irregular intervals at an established place in this State, by any person, directly or indirectly, for or on account of the producer or producers, consignor or consignors thereof, at public auction or at private sale, except that this term shall not apply to established markets operating under Federal or State regulations, or to any public or private farm or purebred livestock sale."

Section 3 of the act provides:

"No person as defined in this act shall engage in the business of operating a

community sale unless duly licensed, as hereinafter provided."

Section 4 of the act provides for the issuance of licenses by the State Veterinarian upon payment of an annual fee of \$35.00.

Section 5 of the act authorizes the State Veterinarian to revoke or suspend licenses. The grounds for revocation relate generally to matters concerning the health of livestock offered for sale, sanitary conditions at the place of sale and accounting to the owners of the livestock sold.

Section 8 of the act requires a bond, conditioned upon the payment to the vendors of the proceeds of animals sold for him at such sales.

Section 15 of the act declared an emergency as follows:

"There is at present no law in this State regulating the sale, health or sanitation of livestock sold or moved through community sales and because of the fact livestock is a principal food item necessary to the health and protection of the State and Nation and because a law directly affecting the sanitation and health of livestock directly affects the production of same, it is hereby declared by the General Assembly that an emergency exists within the meaning of the Constitution and this act shall be in full force and effect from and after its passage and approval."

Thus, it appears that the Community Sales Law is primarily an exercise of the police power designed to protect the public as well as the persons whose livestock is offered for sale in such manner.

There is no constitutional limitation which prevents the state from levying upon one person two or more excise or license taxes for different purposes or pursuant to different powers of government. (*Hertz Drivurself Stations, Inc. v. City of Louisville*, 294 Ky. 568, 172 S.W. (2d) 207, 147 A.L.R. 306.) See *Asotsky v. Beach*, 319 Mo. 810, 58 S.W. (2d) 22, 62 A.L.R. 95.

In enacting the Community Sales Act, the Legislature did not make any express provision to the effect that a person holding a community sales license need not procure an auctioneer's license, nor can it be said that, in defining community sales to include sales at auction, did the Legislature, we feel, create an implied exemption from the Auctioneer's Licensing Law. The license as an auctioneer is required of the person engaged in such business without regard to the place in which the business is conducted. On the other hand, the licensee, under the Community Sales Act, may or may not be an auctioneer. If sales are conducted at auction, the Community Sales Act licensee may employ some other person to act as the auctioneer.

In view of such circumstances, and the further fact that the purposes of the two acts are wholly different, we feel that no implied exemption from the requirement of an auctioneer's license can be found in the Community Sales Licensing Act.

As for your inquiry regarding the effect of the sixth exemption in Section 14927, that has, we feel, no bearing upon the liability to obtain an auctioneer's license inasmuch as under Section 14912 a license is necessary, even though the sale at auction be of property exempt from duty under Section 14927.

Conclusion.

Therefore, it is the opinion of this department that an auctioneer at a community sales barn is required to have a license as an auctioneer under Chapter 116, R. S. Mo. 1939.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RRW:ml