

PEDDLERS: Each employee selling wares of bakery at retail from truck must have state license and may be required to get county license if court so orders.

4-16
April 3, 1940

Hon. A. L. Gates,
Prosecuting Attorney,
Moniteau County,
California, Missouri



Dear Sir:

This will acknowledge receipt of your letter of March 15, 1940, which is as follows:

"I desire and request an official written opinion from your department concerning the following facts.

A baking company in Jefferson City, Missouri, owns and operates numerous trucks, two of which are operating in Moniteau County. These trucks have a regular route on which they sell at retail to customers, namely, patrons at their homes, bread and pastries. The drivers of these various trucks are the agents of the baking company. Is the baking company required to pay a State baking license on each individual agent operating or will the baking company with the payment of one bakery peddler's license meet with Sec. 13,318 R. S. 1929?

Also, can the said company operate more than one truck as a peddler, if he be one, in one county and pay only one county peddler's license? Or is the baking company required under Sec. 13,318 R. S. 1929 to pay a state peddler's

license for each agent regardless of where he may be operating in the State and a County peddler's license for each agent in the county in which the various agents may be operating?"

Section 13312 R. S. Mo. 1929 defines a peddler and the definition given clearly includes a bakery that sells its products at retail from a truck that goes about the country. Section 13313 R. S. Mo. 1929 provides in part that "no two or more persons shall deal under the same license, either as partners, agents or otherwise".

In State v. Downing, 22 Mo. App. 504, 508, the court had before it the above quoted portion of Section 13313 for interpretation. The court said:

"The next objection urged to the judgment of defendant is, that, as the license was issued to Gale, and defendant was his agent, peddling for him, Gale himself not using the license, the statute was not violated. I think the correct interpretation of section 6472, Revised Statutes, is that the license shall be issued to the person actually using it. That is, the individual peddling must have the license. I think the doctrine of principal and agent, invoked by defendant, does not apply to this statute. It says no two persons shall deal under the same license, whether they be 'partners, agents, or otherwise.' It is equivalent to saying, no person shall peddle under the guise of being a partner or agent of one who may have a license. The statute contemplates that the peddler himself will have his license at all times ready for exhibition to any sheriff, collector, constable, or citizen. Sect. 6479, Revised Statutes. It was not intended that his right to peddle should depend on his proof of agency for some one who might be licensed."

Under the authority of this case it is our conclusion that each employee of a baking company that is

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peddling the wares of said bakery at retail is required to obtain a state peddler's license.

Your next question concerns the county peddler's license. Section 13318 R. S. Mo. 1929 fixes the amount to be paid for a state peddler's license and in the last sentence provides that "Any county court may by an order of record require all peddlers doing business in their county to pay a license tax not greater than that levied for state purpose."

While this statute does not expressly so provide, the county peddler's license is imposed on the same terms and conditions as is the state peddler's license. This is to be seen by reason of the fact that the county court is authorized to require all "peddlers" doing business in the county to pay the tax. The reference to "peddlers" relates back to the definition of peddler made in Section 13312 for state purposes and the limitation, above quoted, in Section 13313. That is to say a county peddler's license is imposed upon each person that actually does the peddling in the county.

Our opinion is that each person peddling the wares of the bakery at retail within a county may be required to obtain a county peddler's license, in addition to the state peddler's license, if the county court so orders.

For the purpose of avoiding any confusion, we wish to point out that one state license authorizes a peddler to sell his wares anywhere in the state and that he cannot be required to obtain the state license in each county.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

LLB:CP