PEDDLERS: - Farmer who feeds and kills his own cattle may sell the meat therefrom without paying a peddler's license.

October 2, 1941

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Hon. James L. Paul
Prosecuting Attorney
McDonald County
Pineville, Missouri

FILE
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Dear Sir:

We are in receipt of your request for an opinion, dated September 24, 1941, which reads as follows:

> "We have a person in this county who buys livestock, and after fattening them, wants to kill and sell the meat as a peddler. Under the Missouri Statutes, I do not find any section applicable for a license. Please give me your opinion on whether the same is prohibited, and if not, what section is applicable for a license."

We call your attention to Section 14608 R. S. Missouri, 1939, which reads as follows, to-wit:

> "Whoever shall deal in the selling of patents, patent rights, patent or other medicines, lightning rods, goods, wares or merchandise, except pianos, organs, sewing machines, books, charts, maps and stationary, agricultural and horticultural products, including milk, butter, eggs and cheese, by going about from place to place to sell the same, is declared to be a peddler."

We also call attention to Section 7330 R. S. Missouri, 1939, which reads as follows:

> "No incorporated city, town or village in this state shall have power to levy or collect any tax, license or fees from any farmer, or producer or producers, for the sale of produce raised by him, her or them, when sold from his, her or their wagon, cart or vehicle, or from any person or persons in the employ of such farmer or producer in any such city, town or village."

In the case of St. Louis v. Meyer, 185 Mo. 583, l.c. 592, it is stated that the defendant was a resident of St. Louis county, Missouri, and was for many years engaged in cultivating a farm in said county as its proprietor. Upon this farm he for many years raised apples, potatoes, tomatoes, grapes and like fruits and vegetables; he has also raised chickens and kept milk cows thereon, hauling them either in person or by employee into said city, and passing along the streets of said city, and selling or offering to sell such products in small quantities from his wagon, either from place to place or by outcry, to whomsoever would buy. The Court, in passing upon this statement of facts, in the light of what is now Section 14608, supra, had this to say: l. c. 593,597, 599, 601.

> "The first proposition to be settled in this dispute is this: 'Has the State, by a general enactment of the Legislature, manifested a policy upon the character of business in which defendant was engaged?' If so, the city of St. Louis is restricted to the exercise of only such jurisdiction as is consistent with and in harmony with the policy of the State so manifested.

" * * * * * * * * * * *

"It follows that if defendant, in selling his products in the manner as shown by the agreed statement, was not a peddler under the general law of the State, and no license could be exacted of him for doing that character of business, then we take it that a municipality can not, for conducting the same character of business, exact a license from him, simply by calling him a hawker. The general law of the State has indicated, in no doubtful or uncertain terms, that no license shall be exacted from persons engaged in the character of business indicated by the agreed statement. Whether defendant be defined as peddler or hawker, an ordinance which undertakes to exact a license from him is not in harmony with the policy of the State as manifested by its general laws upon the subject, and as was said by the court in Trenton v. Clayton, supra: 'As the municipal corporation can not legislate regarding any subject-matter unless so authorized by the State, so is the corporation powerless to extend or widen the scope of its powers by the arbitrary and unauthorized definition of words or terms, so as to include more than was intended by the Legislature.

* * *

" * * * The agreed statement of facts upon which this cause was submitted to the trial court leaves no doubt as to the character of business in which the defendant was engaged. It was that of a farmer, and the mere fact that he went from place to place, similar to

> that of peddler or hawker, to dispose of the fruits of his business, by no means is sufficient to warrant the adding to his name as farmer that of peddler or hawker. The disposition of the products of his farm in the manner indicated by the facts in evidence must be treated as a mere incident to his business of farming. * * * *
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> "'* * * People who bring produce here from the country are not peddlers or itinerant traders, but farmers; * * every farmer who wagons here what he makes at home from the soil need fear nothing from any discrimination against him in favor of those who live nearer to the city.' * * * " (Underscoring ours.)

In the case of Higbee v. Burgin, 197 Mo. App. 682, the defendant was a farmer and sold from his wagon in the appellant city, near which he lived, spareribs and sausage made from hogs raised and butchered by him. The Court, in passing upon this statement of facts in the light of what is now Section 7330, supra, had this to say: l. c. 683, 684, 685 -

> "Defendant was a farmer and sold from his wagon in appellant city, near which he lived, spareribs and sausage made from hogs raised and butchered by him.
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> "The word 'produce' may have a variety of meanings dependent upon the connection in which it is used. In reference to the produce of a farmer the court of appeals

of the District of Columbia said:

"'But the common parlance of the county and the common practice of the country, has been to consider all those things as farming products or agricultural products which had the situs of their production upon the farm, and which were brought into condition for the uses of society by the labor of those engaged in agricultural pursuits, as contra-distinguished from manufacturing or other industrial pursuits.'

* * * * * *

"Under the definition given it seems to us beyond question that the pursuit undertaken by defendant was that vending 'produce' within the meaning of our statute supra. The meat being sold by defendant was raised and brought into use for human consumption on the farm by the defendant who was engaged in agricultural pursuits and was, therefore, farm produce. * * * * * *

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"* * * If instead of selling the sausage and spareribs of the hogs defendant had sold the lard rendered from their fat, could it be said that the lard was not 'farm produce?' Or would it do to say that when a farmer is making his butter and cheese he is engaged in the creamery business? We think not. Similar comparisons could be made ad infinitum. Whatever might have been said in the beginning as to the farmer being engaged in the pursuit of slaughtering, slaughter house operation or meat packing, when he butchered

> stock raised on his farm, such as the hogs involved in this case, the usages and practices of generations on American farms has in this day made such a practice one of agriculture or farming.
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> "We are unable to see how it can be said that fresh meats do not come within the definition of agricultural products as that term is used in section 10282 of the statute. * * * "
> (Section 10282 is now Section 7330 R. S. Missouri, 1939.)

See 7 C. J. 1023, Note 36; 25 C. J. 673, Note 55.

In the case of Re Snyder, (Idaho Case), 68 L. R. A., the Court held that beef is the product of the farm and may be sold within the corporate limits of cities of the State of Idaho, without license, when said beef is raised and butchered by the farmer offering said meat for sale.

CONCLUSION

We are of the opinion that a farmer who feeds his own cattle and butchers the same has the right to sell the meat in the cities of the State of Missouri, without paying a peddler's license so to do.

Respectfully submitted

APPROVED:

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