

LICENSES:
MERCHANTS:
ITINERANT VENDORS:
TAXATION (MERCHANTS AND
MANUFACTURERS):

1. That a person, who in the county of his residence opens a place of business for the purpose of the seasonal sale of fireworks, is:

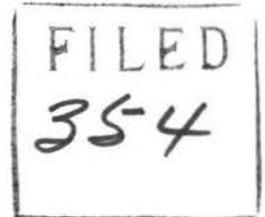
(a) a merchant subject to Sections 150.010 through 150.290, RSMo; (b)

not a manufacturer and is not subject to Sections 150.300 through 150.370, RSMo; (c) is an itinerant vendor subject to Sections 150.380 through 150.460, RSMo; and (d) is not a peddler and is not subject to Sections 150.470 through 150.540, RSMo. 2. That a person who is a wholesale supplier of fireworks to retailers, who does not manufacture such fireworks, who is not in a temporary or transient business of selling goods, wares, and merchandise from a structure for the exhibition and sale of such goods, wares, and merchandise, and who does not sell door to door, is: (a) a merchant subject to Sections 150.010 through 150.290, RSMo; (b) not a manufacturer and is not subject to Sections 150.300 through 150.370, RSMo; (c) is not an itinerant vendor subject to Sections 150.380 through 150.460, RSMo; and (d) is not a peddler and is not subject to Sections 150.470 through 150.540, RSMo.

OPINION NO. 354

August 31, 1971

Honorable Channing D. Blaeuer
Prosecuting Attorney
Randolph County
211 West Reed Street
Moberly, Missouri 65270



Dear Mr. Blaeuer:

This is in reply to your request for an official opinion of this office concerning the question whether the provisions of Chapter 150, RSMo, apply to a person, who in the county of his residence opens a place of business for the purpose of the seasonal sale of fireworks, and also asking whether such chapter applies to the suppliers of fireworks to such vendor.

Chapter 150 provides for merchants', manufacturers', itinerant vendors', and peddlers' licenses and taxes.

Sections 150.010 through 150.290, RSMo, provide for a merchants' license with a nominal fee, and an ad valorem tax, with merchant defined in Section 150.010 as follows:

"Every person, corporation, copartnership or association of persons, who shall deal in the

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selling of goods, wares and merchandise at any store, stand or place occupied for that purpose, is declared to be a merchant. Every person, corporation, copartnership or association of persons doing business in this state who shall, as a practice in the conduct of such business, make or cause to be made any wholesale or retail sales of goods, wares and merchandise to any person, corporation, copartnership or association of persons, shall be deemed to be a merchant whether said sales be accommodation sales, whether they be made from a stock of goods on hand or by ordering goods from another source, and whether the subject of said sales be similar or different types of goods than the type, if any, regularly manufactured, processed or sold by said seller."

Section 150.020 provides:

"The term 'merchant', as used in sections 150.010 to 150.290, shall be construed to include all merchants, commission merchants, grocers, manufacturers and dealers in drugs and medicines, except physicians for medicines used in their practice, whether trading as wholesale or retail dealers."

This definition of "merchant" is for ad valorem tax purposes. Section 150.040; *Campbell Baking Co. v. City of Harrisonville, Mo.*, C.C.A., 50 F.2d 670, 675.

Manufacturers are licensed and taxed in the same manner as merchants are licensed and taxed, Section 150.310, pursuant to the provisions of Sections 150.300 through 150.370. A manufacturer is defined in Section 150.300 as follows:

"Every person, company or corporation who shall hold or purchase personal property for the purpose of adding to the value thereof by any process of manufacturing, refining, or by the combination of different materials, shall be held to be a manufacturer for the purposes of sections 150.300 to 150.370."

Sections 150.380 through 150.460 pertain to itinerant vendors. A license is required, with payment of a license fee, Section 150.390, but there is no provision for ad valorem taxation. An itinerant vendor is defined in Section 150.380 as follows:

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"1. The words 'itinerant vendor', for the purposes of sections 150.380 to 150.460, shall mean and include all persons, both principal and agents, who engage in, or conduct, in this state, either in one locality or in traveling from place to place, a temporary or transient business of selling goods, wares and merchandise with the intention of continuing in such business in any one place for a period of not more than one hundred and twenty days, and who, for the purpose of carrying on such business, hire, lease or occupy, either in whole or in part, a room, building, or other structure, for the exhibition and sale of such goods, wares and merchandise.

"2. The provisions of sections 150.380 to 150.460 shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to bona fide sales of goods, wares and merchandise by sample for future delivery, nor to hawkers on the streets or peddlers from vehicles, nor to any sale of goods, wares or merchandise on the grounds of any agricultural society during the continuance of any annual fair held by such society."

Finally, peddlers are required to also obtain a license upon payment of a fee. Sections 150.470 through 150.540. There is no provision in these sections for payment of an ad valorem tax. A peddler is defined in Section 150.470 as follows:

"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 stationery, 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."

I

The first question is whether a person, in the county of his residence, who opens a place of business for the seasonal sale of fireworks is subject to the provisions of Chapter 150.

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It is our opinion that such person is dealing in the selling of goods, wares, and merchandise at a store, stand or place occupied for that purpose; and, therefore, such person is a merchant subject to license and payment of ad valorem taxes pursuant to Sections 150.010 through 150.290. Section 150.020; and see State v. Whittaker, 33 Mo. 457. Assessments are made pursuant to Sections 150.050 and 150.180.

Such person is not a manufacturer subject to Sections 150.300 through 150.370 because he is not holding or purchasing property for the purpose of adding to the value thereof by any process of manufacturing, refining, or by the combination of different materials.

If such person has the intention of continuing in his business in one place for a period of not more than 120 days, then, it is our further opinion that he is subject to an itinerant vendor's license under Sections 150.380 through 150.460 because from the facts you have stated, we assume he will conduct in one locality a temporary business of selling goods, wares, and merchandise and for the purpose of such business occupies a building or other structure for the exhibition and sale of such goods, wares, and merchandise. Section 150.380; and see State v. Long, 203 Mo.App. 427, 220 S.W. 690; and City of St. Louis v. Weitzel, 130 Mo. 600.

Finally, such person is not subject to Sections 150.470 through 150.540 because he is not selling goods, wares or merchandise by going about from place to place and is, therefore, not a peddler. Section 150.470.

II

The second question is whether Chapter 150 applies to the supplier of fireworks to the vendor discussed in question one. We assume your question concerns what is commonly called a wholesaler who sells to retailers, and is not the person manufacturing the goods.

It is our opinion that such person is a merchant because wholesale dealers are included in Section 150.020 construing the term "merchant" as used in Sections 150.010 to 150.290.

Since we have assumed from your question that such person is not manufacturing, he is not required to obtain a manufacturer's license under Section 150.300.

As to whether such person may be subject to Sections 150.380 through 150.460, since you have not stated facts that indicate a

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temporary or transient business of selling goods, wares, and merchandise from a room, building or other structure, for the exhibition and sale of such goods, wares, and merchandise, we conclude that such person is not an itinerant vendor. Section 150.380.

Finally, there is the question whether such person is a peddler subject to Sections 150.470 through 150.480. In *State v. Smithson*, 106 Mo. 149, 17 S.W. 221, it was held that one who carries around goods from door to door and sells them is a peddler, whether the goods belong to him, or to another.

However, a person going from house to house, who carries nothing to be sold and delivered, having with him only samples, which he does not sell, but only solicits orders for goods, which orders are to be forwarded to his employer, and the sale is not complete until acceptance by the employer and delivery at a future date, is not a peddler. *State v. Hoffman*, 50 Mo.App. 585.

On this question, since we have assumed your question relates to a wholesaler, we further assume such person is not selling goods door to door, and therefore, we conclude that such a person is not a peddler.

CONCLUSION

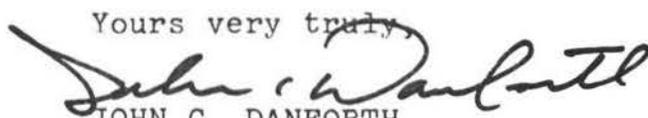
It is the opinion of this office:

1. That a person, who in the county of his residence opens a place of business for the purpose of the seasonal sale of fireworks, is: (a) a merchant subject to Sections 150.010 through 150.290, RSMo; (b) not a manufacturer and is not subject to Sections 150.300 through 150.370, RSMo; (c) is an itinerant vendor subject to Sections 150.380 through 150.460, RSMo; and (d) is not a peddler and is not subject to Sections 150.470 through 150.540, RSMo.

2. That a person who is a wholesale supplier of fireworks to retailers, who does not manufacture such fireworks, who is not in a temporary or transient business of selling goods, wares, and merchandise from a structure for the exhibition and sale of such goods, wares, and merchandise, and who does not sell door to door, is: (a) a merchant subject to Sections 150.010 through 150.290, RSMo; (b) not a manufacturer and is not subject to Sections 150.300 through 150.370, RSMo; (c) is not an itinerant vendor subject to Sections 150.380 through 150.460, RSMo; and (d) is not a peddler and is not subject to Sections 150.470 through 150.540, RSMo.

The foregoing opinion, which I hereby approve, was prepared by Assistant, Walter W. Nowotny, Jr.

Yours very truly,


JOHN C. DANFORTH
Attorney General