Peddlers License—Indian Reservation, Stores On—Stenographers Fees.

Senate Bill No. 5, p. 62, laws 1901, is repealed by the provisions of the laws of 1905, p. 178.

A merchant on an Indian Reservation cannot be required to pay a state or county license for trading with the Indians, nor where the conduct of his business is a part of the governments policy and method of dealing with the Indians. But where such merchant's business does not fall within this rule, he is liable for the payment of the license required by state law.

Under the provisions of Section 374, C. C. P. but one stenog-

rapher's fee can be collected from the same party in the same action, even though there is a re-trial had of the case.

Helena, Montana, Oct. 2, 1905.

Hon. F. H. Ray, Assistant State Examiner, Helena, Montana.

Dear Sir:—I am in receipt of your letter of September 25, in which you ask the opinion of this office with respect to the following questions, to-wit:

"1. Does the repealing clause of the peddlers license, page 178 of the 1905 laws, repeal Senate Bill 5 on page 62 of the 1901 laws?

"2. Are stores on Indian Reservations subject to State and County license?"

3. Are stenographers fees payable at a second trial which both parties have asked for?"

These questions will be answered in their order.

I.

Section 4066, Political Code, as amended by the laws of 1897, provides that every traveling merchant, hawker, or peddler, etc., "must pay a license" except when he sells only products or articles raised or manufactured by himself. On February 21, 1901, an act was approved, which provides, in part, that "a veteran of the war of the rebellion shall have a right to peddle, hawk, vend and sell his own goods and to engage in the business of autcioneer without paying for the license as now provided by law." (Laws 1901, p. 62.) On March 3, 1905, an act was approved which amends said Section 4066, as the same was amended by the laws of 1897. (Laws 1905, p. 175.) This latter act provides, Section 1, "that Section 4066, as amended, * * * be and the same is hereby amended so as to read as follows.' Then follows the section as amended, which is substantially the same as the act of 1897, above, except that provision is made that "every traveling merchant * * * who uses a wagon, animal, or other means of transportation other than on foot, must pay a license of $50.00 per quarter." "Section 2. All acts or parts of acts in conflict herewith are hereby repealed."

The act of 1905 provides that every person who peddles, etc., "must pay a license," while the act of 1901 provides that the class of persons therein named shall have the right to peddle, etc., "without paying for the license." These provisions of the two acts are in direct conflict. If the repealing clause of the 1901 act had been limited to the act of 1897, or confined to acts conflicting with that part of said Section 4066 originating with the acts of 1905 there might be reasonable ground for the construction that it was not the legislative intent to repeal any part of the act of 1901 not in conflict with the new part of the section. But this repealing clause contains neither exception nor limitation. It is not in the usual form of repealing "all acts or parts of acts in conflict with this act" but repeals "all acts or parts of acts in conflict herewith." The language used clearly expresses a deliberate intention to wipe from the statute all laws conflicting with any part of the section as the same is written in the act of 1905. That is the natural and accepted meaning of

the language employed. "Words and phrases are construed according to the context and the approved usage of the language." (Sec. 15, Political Code.)

It is the policy of the state to deal liberally with the class of persons named in the law of 1901, but the subject of license is wholly within the jurisdiction and province of the legislature, and I cannot go beyond, nor fall short, of the legislative command. As was said in Lane v. Commissioners, 6 Mont. 473, there is no power "to insert what has been omitted nor to omit what has been inserted."

It must, therefore, be determined that the act of 1905, referred to in your letter, repeals all that part of the said act of 1901 relating to hawkers, peddlers and traveling merchants, but does not repeal that part of the act of 1901 which relates to the "business of auctioneering,' for the subject of auctioneering is not treated of in the act of 1905 and it does not, therefore, fall within the meaning of the repealing clause.

This construction finds support in the following authorities, Lane v. Commissioners, above, Sutherland Statutory Construction, paragraphs 246 to 250, inclusive, and cases therein cited.

II.

Indian reservations are created by authority of the national government and the jurisdiction of that government is absolute and exclusive as to all matters, civil or criminal, affecting the rights, property, relations or trade with or between Indians within the reservation. (Draper v. U. S. 164, U. S. 240; U. S. v. McBratney, 104 U. S. 621.) The government establishes its own rules and regulations. No one can establish a business on an Indian reservation without permission from the proper department of the United States govment, and when this business falls within any of the classes above enumerated, or is otherwise a part of the government's method of dealing with the Indians, the state cannot interfere or impose additional restrictions.

The government may, however, grant permission to a merchant to establish his place of business within the limits of an Indian reservation, who has no connection with the Indian trade under government license and whose trade is principally with persons not Indians. In that event such merchant is liable for the payment of the license imposed by the state law, for the state has jurisdiction on an Indian reservation as to all matters not affecting the Indians or the regulations of the government relating thereto. Each case must be decided on it own facts, but the following may aid as a general rule: A merchant on an Indian reservation cannot be required to pay a state or county license for trading with the Indians, nor where the conduct of his business is a part of the government's policy and method of dealing with the Indians, but where such merchant's business does not fall within this rule he is liable for the payment of the license required by state law.

III.

Section 374, Code of Civil Procedure, provides that "In every issue of fact in civil actions tried" a stenographers fee of three dollars must be paid by each party. The only authority for collecting this fee at all is

this statute, and the statute says a fee in every issue of fact. It does not say in every trial of an issue of fact. Where a fee has been once paid in an issue of fact, the authority of the statute is exhausted. The statute does not provide for the payment of an additional fee in case of a retrial of the same issue of fact. The statute being silent, it follows that there is no authority to require this fee to be paid but once in the same action.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.