

Automobile Accessories—Whether Merchant Handling Accessories is Exclusive Dealer in.

A merchant, engaged in general lines of merchandising and carrying only a few isolated articles classed as accessories, where business done in accessories constitutes only a small and inconsiderable part of his total business, is not an exclusive dealer in accessories within the meaning of Chapter 199 of the Laws of 1921, and is not required to pay the license fee therein provided for.

John B. Muzzy, Esq.,
County Attorney,
Stanford, Montana.

My dear Mr. Muzzy:

You have inquired whether small merchants who keep for sale a few Ford car tires and accessories are "exclusive dealers in automobile accessories" within the terms of Chapter 199 of the Laws of 1921, requiring such dealers to pay a license fee of \$10.

On June 20, 1921, an opinion of this office was rendered to the Hon. C. T. Stewart, Secretary of State, to the effect that the word "exclusive," as used in the Act, means "exclusive of other departments of the business pertaining to motor vehicles and had no reference to any other kind of business," and that the phrase "exclusive dealer in automobile accessories" means "a dealer who handles automobile accessories, either solely or as a substantial part of his business, but exclusive of motor vehicles or motorcycles, and has no reference to any other line of merchandise." The fact, therefore, that such merchants handle other lines of merchandise than automobile accessories does not remove them from the operation of the law.

I do not believe, however, that it was the intention of the Legislature that every small merchant who may handle a few accessories, as, for instance, spark-plugs, for the convenience of the community, as is often done by country stores, would necessarily be required to pay the license fee required of dealers in accessories. As stated in the opinion referred to, dealing in accessories should constitute "a substantial part of his business." Undoubtedly where a store has a department given to the handling of accessories, or where a substantial or varied line of accessories is carried, a license fee would be required to be paid, but the doing of only a trifling amount of business in some small line of accessories would not constitute a merchant an exclusive dealer in accessories.

While it is true that this leaves the matter of deciding when one is a "dealer in automobile accessories" within the discretion, to a certain extent, of those charged with the enforcement of the law in question, and while in isolated instances the exercise of this discretion might be erroneous or the discretion might be abused, on

the whole the intention of the Legislature will more nearly be effected than by any other construction that might be placed on the Act.

I am, therefore, of the opinion that where a merchant engaged in other or general lines of merchandising carries only a few isolated articles that might be classed as accessories, and the business done in same constitutes only a small and inconsiderable part of his total business, such merchant is not an exclusive dealer in accessories so as to be within the terms of Chapter 189 of the Laws of 1921, and is not required to pay the license fee therein provided for such dealers.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.