

**Itinerant Vendors—Sales from Automobile—Placing of Goods in Hands of Merchant for the Purpose of Escaping License.**

A person, operating and selling goods from an automobile, under the facts appearing in the opinion, is required to procure an itinerant vendor's license under Chapter 110 of the Laws of 1911, and to pay a license fee of \$100 per quarter.

Jos. C. Tope, Esq.,  
County Attorney,  
Terry, Montana.

My dear Mr. Tope:

You have inquired whether one who sells goods from an automobile for the Watkins Company, and who places a small stock of his goods upon a shelf of a local store to be sold by the merchant on commission, possibly a nominal rental to be paid the merchant for the use of the shelf, is an itinerant vendor so as to be required to procure a license and pay a license fee of \$100 per quarter under Chapter 110 of the Laws of 1911, or whether such person is doing business "at a fixed place of business" within the meaning of said chapter, so as to be excepted from the operation of the Act.

Sections 1 and 2 of the Act are as follows:

"Section 1. Every person, company or corporation, who at temporary quarters sells or offers or exhibits for sale any goods, wares or merchandise, and every person who travels

about from place to place and transports by any mode of conveyance and sells, offers or exhibits for sale any goods, wares or merchandise, and every person who personally solicits orders for the future delivery of any goods, wares or merchandise, either by or without sample, including peddlers and hawkers, is an itinerant vender within the meaning of this Act; Provided, however, that this section shall not apply to wholesale dealers selling to dealers or merchants, nor shall it apply to any person or the representative of any person, company or corporation, doing business at a fixed place of business and taking orders for the future delivery of any goods, wares or merchandise, kept at or in connection with and handled through such fixed place of business, nor shall it apply to the sale of books, papers or school supplies or the sale of any fruits, vegetables, meats or other farm produce when sold by the grower or producer thereof.

"Section 2. A 'person, company or corporation doing business at a fixed place of business' within the meaning of this Act, is any person, company or corporation who keeps, offers or exposes for sale to the general public, in a building of permanent nature any goods, wares or merchandise of any description; Provided, however, that this definition must not be construed as including any person, company or corporation keeping any goods, wares or merchandise, or transacting any such business in any rented apartment or apartments, in any hotel, boarding house, lodging house, or private residence, or in any other building or structure not designated for or commonly used as a store or shop.'"

The company in question, under the statement of facts submitted, is not keeping the goods for sale on the shelf of the merchant, but the merchant himself is keeping them for sale. It is not the place of business of the company, but the place of business of the merchant. The placing of a small stock of goods upon a shelf, rented temporarily, is the merest subterfuge. The salesmen in automobiles do not operate from the local store as their main "place of business," nor are they under control of the local merchant. The arrangement has none of the marks of the place of business of the company as defined in the Act, nor are the salesmen "taking orders for the future delivery of any goods, wares or merchandise kept at or in connection with and handled through such fixed place of business."

New Castle v. Cutler, 15 Pa. Sup. Ct. 612;

Snyder v. Classon, 50 N. W. 678;

Com. v. Cromwell, 30 N. E. 1015.

It is my opinion that the representatives of the company in question, who operate and sell from automobiles under the conditions stated, are required to procure a license under Chapter 110, supra, and to pay the license fee of \$100 per quarter therein provided.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.