Coal Dealers—License Fee—Collection Where the Term of the Preceding License Has Not Expired.

Chapter 3 of the Extraordinary Session Laws of 1921 construed to require each person engaged in the business referred to in the Act to pay the $1 license fee and to procure a license under the Act, and the fact that the entire term of the license issued under the Act of 1911 had not yet expired will not entitle the holder of such license to continue to do business by virtue of the same under the Act of 1921.

J. W. Walker, Esq.,
State Treasurer,
Helena, Montana.

My dear Mr. Walker:

You have requested my opinion whether a coal dealer who had, prior to the passage of Chapter 3 of the Extraordinary Session Laws of 1921, paid his one dollar license fee under the provisions of

Chapter 80 of the Laws of 1911, and had received a license for a period of one year from the date thereof, which time extended into the year 1921 and beyond the effective date of said Chapter 3, should be required to make application for another license and pay an additional one dollar under the provisions of Section 2 of Chapter 3, supra. Section 2 of Chapter 3 of the Extraordinary Session Laws of 1921 is as follows:

> "Section 2. Every person who engages in or carries on the occupation or business in this State of retailing, or selling at retail coal of any kind must, for the year 1921, and annually each year thereafter when engaged in such occupation or business, procure from the State Treasurer a license to engage in and carry on such occupation or business in this State, and shall annually pay to the State Treasurer for such license a fee of One Dollar ($1.00), together with an additional sum or amount equal to five (5) cents a ton for each and every ton of coal containing two thousand (2,000) pounds sold by such person during such year and for the mining of which coal no 'mine operator' has paid, or assumed liability for the payment of, any license fee to the State of Montana under any law of this State."

Under Section 4 of Chapter 3 the license of one dollar referred to in Section 2 is required to be paid by each person engaging in the business mentioned, within thirty days after the end of the quarter ending March 31st of each year, and the additional five cents per ton is required to be paid in quarterly installments.

Chapter 80 of the Laws of 1911 requires a license to be obtained from the Secretary of State and a fee of one dollar to be paid to that officer. Under this law the license might be obtained at any time during the year and run for a period of one year from its date.

It evidently was the intention of the Legislature to create an entirely new Act relating to licenses of coal dealers, and one not in any sense a continuation of the former Act. Section 18 of the new Act specifically repeals Chapter 80 above referred to. Chapter 80 was designed to prevent fraud and misconduct by coal dealers and was a police regulation, with only the nominal fee of one dollar involved, which went to the Secretary of State. Chapter 3 is distinctly a revenue act, the one dollar fee being but a small incident of the total revenue exacted, and is payable, with the other taxes provided in the Act, to the State Treasurer.

The power of the Legislature to provide for license taxes is settled in this State.

State v. Hammond Packing Co., 45 Mont. 343;
affirmed by U. S. Supreme Court, 233 U. S. 331;
Equitable Life Assurance Co. v. Hart, 55 Mont. 76.

While the license required under the new Act is, as stated, for an entirely different purpose from that required by Chapter 80 of the Laws of 1911, and the two have little relation to each other, even if they were for similar purposes, the Legislature has authority to terminate the former.

A license is but a privilege to engage in business subject to all the limitations, restrictions and liabilities that the law imposes. It carries with it no vested right and may be revoked at any time by the authority conferring it, and is indirectly revoked by subsequent legislation making new and additional requirements for conducting the business licensed. That the Legislature has power to make new conditions, effective at any time, under which occupations or businesses may be engaged in, is well established. The power to place restrictions upon or to tax a business or occupation in the first instance is the power to add to or abolish the restrictions or the tax at any later time. The rule is stated at 25 Cyc. 625 as follows:

> "A mere occupation or privilege license granted by a state is always revokable, the correlative power to revoke the license being a necessary consequence of the main power to grant it."

In Patton v. Brady, 104 U. S. 608, a manufacturer had paid the license tax under the law then in force. Congress thereafter and while the property was still in the possession of the manufacturer enacted a law requiring an additional tax equal to the amount already paid. The Supreme Court of the United States held that this action was within the power of Congress and that the fact that a license had once been paid did not prevent an additional license tax from being required.

See, also:

Portland v. Cook, 48 Ore. 550, 9 L. R. A. (N. S.) 733, and note;
Union Passenger Ry. Co. v. Philadelphia, 101 U. S. 528;
State v. Hovorka, 100 Minn. 249, 110 N. W. 870;
17 Ruling Case Law, pp. 476-477, and pp. 554 et seq.;
Christ Church v. Philadelphia County, 24 How. 300;
People v. New York Tax Commission, 47 N. Y. 501;
State v. Burgoyne, 75 Tenn. (7 B. I. Lea) 173;
McCray v. U. S., 195 U. S., 27;
Doyle v. Continental Insurance Co., 94 U. S. 535;
License Tax Cases, 5 Wall. 462.

While in the case of Bowman v. Continental Oil Co., 252 U. S. 444 (which was in the Supreme Court the second time, reported in U. S. Supreme Court Advance Sheets, July 15, 1921, page 720), it was held that a license tax which by the terms of the New Mexico statute included all distributors, whether selling in original packages imported in interstate commerce, or selling at retail, is non-separable and void as to all, Chapter 3, supra, by its terms confines its opera-

tion to persons who engage in the "occupation or business in this state of retailing or selling at retail coal * * *," and does not therefore come within the rule of that case. That case was decided upon the ground that the New Mexico Act necessarily applied to a dealer engaged in interstate commerce, and was incapable of being applied separately to that part of the business not falling within interstate commerce.

New liabilities have been imposed by the Act of 1921. A license to deal in coal under the Act of 1911 is not a license to deal in coal under the added liabilities and requirements of coal dealers under the law of 1921. The license under the former was for the purpose of safeguarding the public under the police power of the State. The purpose of the latter is to raise revenue under the taxing power of the State.

It is, therefore, my opinion that Section 2 of Chapter 3 of the Extraordinary Session Laws of 1921 requires each person engaged in or carrying on the business referred to in said Act to pay the one dollar license fee and to procure a license under this Act, and the mere fact that the entire term of the license issued under the Act of 1911 has not yet expired will not entitle the holder of such license to continue to do business by virtue of the same under the Act of 1921, but such holder will be required to procure a new license and pay the license fees required under the new Act, including the one dollar chargeable at the time of the issuance of the license.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.