

Licenses, For Selling Buggies by Sample.

No license can be collected, under Chapter 56, Laws 1903, p. 117, where a person uses one or more buggies for samples and travels throughout the county taking orders for buggies, which orders are sent to the factory outside of the state of Montana and there filled and the buggies shipped to the purchaser, or to the agent who delivers them to the purchaser.

Helena, Montana, July 22, 1905.

J. A. Matthews, County Attorney, Townsend, Montana.

Dear Sir:—Your letter of the 20th, regarding the Spauling Manufacturing Company, to hand. This letter was not received until noon to-day, so that it was impossible to get an answer in the afternoon mail. The facts stated by you, and upon which you request an opinion, appear to be as follows: A representative of said company has two sample buggies with him which he hauls through the county and exhibits as samples for the purpose of securing orders for buggies, or other vehicles. When an order is taken the same is sent in to the factory of said company in Iowa where it is filled and the buggy so ordered is shipped to the party ordering the same.

The question submitted is, "Whether he should pay the license provided for in Chapter LVI, laws of 1903, p. 117?"

You further state that you have rendered an opinion to the county treasurer to the effect that license under such law cannot be required of a person transacting business under the circumstances stated above. Your position is correct. Said law provides that "every person, firm or corporation who peddles out, or after shipment to this state, canvasses and sells by sample to users or consumers * * * shall pay in advance a license tax of five hundred dollars," etc.; that is, if the firm should ship a car load or any quantity of buggies to any point of destination within the state, and should then take a sample buggy or vehicle

and travel about the state and solicit orders to be filled from the car load or stock of buggies already shipped into the state and unloaded at some point, then such sale, although made by sample, would come within the provisions of such law. But where they solicit orders by sample and the orders are sent to the factory, which is outside the State of Montana, and there filled and shipped directly to the purchaser, no license can be required under this law, for the person selling by sample is dealing wholly in interstate commerce, the same as any other drummer or traveling salesman selling dry goods or other articles of commerce.

Yours very truly,

ALBERT J. GALEN,

Attorney General.