

License, Repeal of Butchers. Butchers, Peddling Meat.

As the law providing for a butcher's license has been repealed, a butcher may sell meat and take orders from a wagon without any license at all, except such license as may be imposed by city ordinance.

Helena, Montana, December 11, 1909.

Hon. B. B. Law,
County Attorney,
Bozeman, Montana.

Dear Sir:—

I am in receipt of your communication of December 9, in which you request an opinion as to what effect the repeal of the license law for

perons engaged in the butcher business has upon parties living outside of the city limits who buy, fatten, kill and sell meats, such sales being made at his place of business, and also from his wagon which travels through a part of the county and comes within the city limits, and who also takes orders at his place of business as well as while out with his wagon.

In an opinion given to county attorney Matthews, on November 18, 1905, (Opinions of Attorney General 1905, p. 264), it was held, under the law as it then existed, that a butcher is not required to have a shop or fixed place of business in the same sense as a merchant or drug store, and that if he has a slaughter house or other suitable place for killing his beef he can sell the same either by retail at that place or by distributing it to customers by means of a wagon, without procuring any other license than the regular butchers license. It was also pointed out in said opinion that the language of section 4064, political code, made a distinction between persons selling goods, wares and merchandise and butchers. As a butcher was not required to procure a peddlers license in order to sell meat and take orders from a wagon when he had procured a regular butcher's license, it necessarily follows that when the regular butcher license law has been repealed that it would leave him free to sell meat and take orders from a wagon without any license at all; especially is this true when we consider that the legislature in repealing section 4064, which provides for a butcher's license, did not also repeal section 4065, which provides that:

"No further or other license is required of any butcher by reason of any wagon used in connection with the business."

Furthermore, there is a serious doubt as to whether section 2765, revised codes, which requires:

"Every traveling merchant, hawker or peddler who carries a pack and vends goods, wares and merchandise,"
to pay a license applies to a person engaged in the butcher business.

This section was enacted prior to the repeal of section 4064, political code, and said section 4064 made a clear distinction between persons engaged in the business of selling goods, wares and merchandise and persons engaged in the butcher business, and it would seem that the legislature in enacting section 2765 had this distinction in view. Of course, if the butcher sells meat only from cattle raised by himself, then he is clearly exempted from paying a peddler's license, under the last clause of said section 2765. (See Opinions of Attorney General, 1095-06, p. 270.)

What is said above, of course, relates only to county licenses, as the question of city licenses is governed by city ordinances, under subdivision 3 of section 3259, revised, and the city would have a right to impose a license in cases where there is no county license.

See 99 Pac. 1059.

Very truly yours,

ALBERT J. GALEN,

Attorney General.