

Itinerant Vendors, Who Are. Peddlers, Who Are. Chapter 110, Laws 1911, Construed.

Where orders for merchandise are taken by a regularly established firm in a foreign state, and such orders are filled in such foreign state and delivered directly to the purchaser, such transaction would not constitute the person soliciting such orders an itinerant vendor within the meaning of Chapter 110, Laws of 1911.

Where orders are taken by a representative to be filled and the goods are then given to the representative and by him delivered from house to house to the purchasers and collections made by such representative for the goods so delivered, such representative would come within the provisions of Chapter 110, Laws of 1911, and would be classed as an itinerant vendor

August 9, 1911.

Hon. Justin M. Smith,
County Attorney,
Bozeman, Montana.

Dear Sir:

I am in receipt of your letter of the 7th inst., in which you submit briefly the facts of three cases arising in your county and concerning which you ask my opinion as to the applicability of the provisions of Chapter 110, Laws of 1911, to the facts in such cases.

"The first is that of a man * * * who goes about through the county and takes orders for groceries. These orders are taken from farmers and in some instances the groceries are delivered when the order is taken, but in the greater number the orders are for future delivery. The party

claims to represent an eastern house and sells and takes orders direct for it."

"The second is that of a man * * * who goes about through the county and takes orders for clothing, suits of clothes, overcoats, etc. He claims to represent an eastern house and all of his orders are for future delivery.

"The third is that of a man * * * who represents the White Flame Light Company, of Grand Rapids, Michigan. He goes about through the county and not only takes orders for the 'Great White Flame Burner,' but delivers the burner when the order is taken."

It seems to me that the provisions of Sections I and II of said Chapter 110, Laws of 1911, are rather plain as to the meaning, and as to the persons therein classified as "Itinerant vendors." It provides:

"Every person who personally solicits orders for future delivery of any goods, wares, or merchandise, either by or without sample, including peddlers and hawkers, is an itinerant vendor within the meaning of this Act."

This section also provides:

"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, etc., is an itinerant vendor."

Of course the legislature could not, by the enactment of a law of the nature under consideration, interfere with what is known as interstate commerce and it is not the object nor intention of this law so to do. Where the orders are sold bona fide by a regularly established or existing firm in a foreign state and such orders are filled in such foreign state and are delivered directly to the purchaser by mail, express or freight, such transaction would not, in my opinion, come within the provisions of said Chapter 110, but where the orders are sold by a representative who travels about from place to place, and where the goods are then and there delivered by such person irrespective of what designation he may give himself, or where the goods are shipped to such agent, and by him delivered from house to house pursuant to previous orders therefor, then such person, company or corporation is acting, in my opinion, within the provisions of said Chapter 110, and must procure a license to transact such business. In view then of the foregoing and applying the interpretation to the three cases mentioned in your letter it would seem that the person mentioned in the first and third cases are itinerant vendors within the meaning of the law, and that the person mentioned in the second case is not an itinerant vendor within the meaning of the law, provided the orders are filled and delivered directly by the usual mode of transportation from the eastern house to the customer. If, however, in the second case, the orders are taken by a representative and are filled, and the goods are then given to the representative and by him delivered from house to house to the respective customer and collections made therefor at the time

of such dlivery, then he also would come within the provisions of such law, and would be classed as itinerant vendor.

Very truly yours,

ALBERT J. GALEN,

Attorney General.