

License of Coal Dealer, Doing Business at Two or More Places. Coal Dealer, License of. Agents of Coal Dealer, Necessity of Procuring License.

Under a single license the licensee is permitted to maintain separate places of business, provided that the business at these separate places is not carried on through an agent or agents having authority to sell. If the business is transacted through such agents, each agent must have an individual license.

January 22nd, 1913.

Hon. A. M. Alderson,
Secretary of State,
Helena, Montana.

Dear Sir:

I have investigated the question presented by you to this department, in your oral request for an opinion as to whether, under Chapter 80 of the laws of 1911, a coal dealer, doing business at two or more different places within the state, is obliged to take out a separate license for each separate place of business.

I am of the opinion that one license is sufficient. Throughout the act the license provided for is always spoken of in the singular. It does not appear that either the application for a license, or the license itself shall name the place of such business. (Sec. 2 and 3, Chapter 80.) The purpose of the act is obviously not to raise revenue but merely to regulate a business. Anyone desiring to sell coal, etc., "within the limits of the State of Montana, must take out a license." In Sec. 7 of the act the secretary of state is authorized "to revoke the license of any person" in certain cases. The provision in Sec. 7, authorizing the secretary of state "to revoke the license" is scarcely intelligible, if under the provisions of the act a person doing business at different places is obliged to take out several licenses. The provisions of the statute are consistent only with the view that the license is deemed to be a license to the person, and not a tax upon a business or upon a place of business.

You are therefore advised that when a person, association or corporation obtains a license, he or it may carry on business in any part of the state or in different parts of the state at the same time.

I do not hold, however, that a license issued to the proprietor is sufficient, if the proprietor does business through agents. The statute requires that "every person, persons, association or corporation, desiring to act as agent for, or to sell at retail, etc., shall make application for license. This section requires that persons desiring to act as agent for another must apply for the license provided for. The rule is thus stated in the American-English Encyclopedia of Law:

"A licensed person or firm may exercise the privilege conferred by the license through clerks or agents, but if the statute provides that every person or corporation engaged in selling certain articles shall obtain a license, a corporation which employs a number of agents must procure a separate

license for each of them." (American and English Encyclopedia of Law, Vol. 21, 813.)

You are therefore advised that under a single license, the licensee is permitted to maintain separate places of business, provided, however, the business at those separate places is not carried on through an agent or agents, having authority to sell. (U. S. v. Chevalier, 102 Fed. 125; Com. v. Tellier, 144 Pa. State, 545.)

But if the business is transacted through agents, having authority to sell, each agent must have an individual license. (21 American and English Encyclopedia of Law, 813; State v. Morrison, 126 N. Carolina, 1123, 36 South Eastern, 329.)

That this is the intention of the law, is further supported by the provision found in Sec. 3, requiring that the license shall "be kept conspicuously posted in his, their or its place of business."

Very respectfully,

D. M. KELLY,
Attorney General.