

**Itinerant Vendors, Who Are. Fruits, Peddling of. Grower,
Who Is. Producer, Who Is.**

The provisions of Chapter 110, Laws of 1911, do not apply to the grower or producer of fruits, but the vending must be done by the grower in person or by his servant, and not by agent.

December 14th, 1912.

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

Dear Sir:

I acknowledge receipt of your letter of the 10th inst., wherein you ask my official opinion as to whether or not a person selling and peddling fruits throughout the city of Bozeman and county of Gallatin is amenable to the provisions of Chapter 110, Laws of 1911, "the itinerant vendor act," and you state that this party is not a grower or producer of the fruits, but that he is the regularly salaried agent of the grower and producer of the apples. As stated in your letter the latter part of Section 1 of said Chapter 110 provides:

"Nor shall it apply to the sale of books, papers or school supplies, or the sale of any fruit, vegetables, meat, or other farm products when sold by the grower or producer thereof."

It is my opinion that this exception would apply with equal force to the grower or producer of apples in Washington or any other state as it does to the grower or producer of Montana, the Legislature not having by express terms limited the exception to local growers. However, it is my opinion that the phrase "grower or producer thereof" would not include the agent of such grower or producer, but that the vending and peddling must be done by the grower in person or his *servant*, not agent. Where the relation of principal and agent exists between the grower or producer and the vendor, the selling and peddling as described in your letter is in my opinion contrary to the intent and provisions of said Chapter 110, Laws of 1911.

Very truly yours,

ALBERT J. GALEN,
Attorney General.