

Premiums—Statutes, Chap. 17, Laws of the Fifteenth Legislative Assembly—Constitutionality of.

Held that Chap. 17, Laws of the Fifteenth Legislative Assembly is constitutional; that the same does not apply to mail order houses and to so-called "drop shipments."

Jan. 11th, 1918.

Mr. L. H. Schaeffer, Chairman,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of recent date requesting my opinion as to the constitutionality of Chapter 17, Laws of the 15th Legislative Assembly, commonly referred to as the Premium Law.

It may not be out of place to say that under the laws of the state the Attorney General is the legal adviser of state and certain county officials only, and that it is physically impossible to give opinions to all who apply. I am always glad, when the affairs of the office will permit, to give advice, but with the work of the office increasing as it has during the past year, it is necessary that outside matters must wait until time can be found for their consideration. I say this that your members may understand the delay upon my part.

Section 1 of the Act provides:

"Every person, firm or corporation who shall use, and every person, firm or corporation who shall furnish to any other person, firm, or corporation to use, as a gift or bonus, or otherwise, in, with, or for the sale of any goods, wares or merchandise, any premiums or bonus, including stamps, coupons, tickets, certifi-

cates, cards, or other similar devices which shall entitle the purchaser receiving the same with such sale of goods, wares or merchandise to procure from any person, firm or corporation, any premium or bonus, including goods, wares or merchandise free of charge or for less than the retail market price thereof upon the production of any number of said stamps, coupons, tickets, certificates, cards, or other similar device; and every person, firm or corporation placing premiums or bonuses of goods, wares or merchandise, including such as crockery, china-ware, aluminumware, tinware, graniteware, or anything else that may be included or contained or delivered with packages of any kind of merchandise of any description, shall, before so furnishing, selling or using the same, obtain a separate license therefor from the county treasurer of each county wherein such furnishing or selling or using of such premiums or bonuses shall take place, for each and every store or place of business in that county from which such furnishing or selling of premiums or bonuses as herein enumerated, or in which such shall take place."

This law is patterned after the Washington law and is constitutional.

Rast vs. Van Demau & Lewis, 240 U. S. 342.

Tanner vs. Little, 240 U. S. 369.

Pitney vs. Washington, 240 U. S. 387.

You desire to know whether or not this act applies to mail order houses located outside the state and selling goods in Montana which contain certificates, coupons, etc. My opinion is that so long as these mail order houses deal direct with the consumer that they are not amendable to the provisions of the Act. In other words, it is Interstate Commerce and therefore not subject to regulations by the state authorities. It is regrettable that such is the case, but it is a matter that must be dealt with by Congress.

Another question presented is the matter of "drop shipments."

This, as I understand, means that the shipment is made direct to the retailer from the factory of the manufacturer, the wholesaler being dropped out so far as the shipment is concerned. These drop shipment offers ordinarily involve an amount of so-called "free goods" with each shipment, the effect of the offer being a mere reduction in price. From a careful study of the Act it seems to me that the language as well as the history thereof indicate that it was intended to affect only the conduct of the retailer in their dealings with consumers and not the commercial transaction in which the manufacturers and wholesalers deal with customers who are themselves dealers.

I am therefore of the opinion that said so-called "drop shipments" are not prohibited by said Act.

Respectfully,

S. C. FORD,

Attorney General.