

Agents — Cities and Towns — Licenses — Ordinances — Taxes.

A license tax cannot be imposed upon a person who takes orders for goods to be shipped from another state.

Anker O. Torrison, Esq.,
County Attorney,
Cut Bank, Montana.

My dear Mr. Torrison:

You have submitted to this office a copy of the city ordinances of Cut Bank with reference to licensing itinerant vendors, and have asked this office whether this ordinance is constitutional. The specific case you state is as follows: John Doe comes into Cut Bank and solicits orders from house to house, takes a deposit and sends orders to a place in Ohio. And you inquire whether he is subject to a license tax under such conditions.

The ordinances are almost identical with the state statutes covering this subject, being Sections 2421 to 2429, inclusive, of the Revised Codes of 1921. These statutes have been upheld in other respects, but our Supreme Court has never passed upon the question which you have presented. However, the general rule is stated in 12 C. J. 106, as follows:

“Statutes and ordinances are unconstitutional, or at least inoperative, when they attempt to impose a tax on canvassers, solicitors, traveling salesmen, or other agents soliciting orders for non-resident principals, the goods being without the state at the time of sale and the contract of sale being accepted or approved in the state of the principal.” (Citing many cases under Note 91.)

In the case of *Crenshaw v. Arkansas*, 227 U. S. 389, the Court said:

“Here, the facts show, the sample ranges carried about from place to place are not sold. Orders are taken and transmitted to the manufacturer in another state for ranges to be delivered in fulfillment of such orders, which are in fact shipped in interstate commerce and delivered to the persons who ordered them. Business of this character, as well settled by the decisions of this court, constitutes interstate commerce and the privilege of doing it cannot be taxed by the state.”

See also the case of *Wrought Iron Range Co. v. Campen*, 47 S. E. 658.

It is, therefore, my opinion that a license tax cannot be imposed upon a person who takes orders for goods to be shipped from another state, as it interferes with interstate commerce.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.