

attempting to license dealer in wholesale who has place of business out of state, receives order and ships merchandise into another state would be unconstitutional, as such business constitutes interstate commerce.

August 8, 1933.

You have submitted this question: "The question has arisen regarding Chapter 164 of the 1933 Session Laws known as the Wholesalers License Law. One party is taking the stand that he can come into Montana, take orders and then bring the goods into Montana, in interstate traffic and not be in conflict with the law and without the necessity of taking the license."

Chapter 164, to which you refer, provides for the licensing of dealers at wholesale. Section 1 defines who is a dealer at wholesale. Section 4 provides: "Licenses to engage in the business of a **dealer at wholesale within the State of Montana** shall be issued by the Commissioner - -" Paragraph c under Section 4 provides: "The license, or a certified copy thereof, shall be kept posted in the office of the licensee at each place within the state where he transacts business; the fee for each license shall be One Hundred Dollars (\$100.00) * * *."

There is nothing in the act to indicate an intention on the part of the legislature to require a license from a dealer at wholesale who maintains a place of business outside of the State of Montana and who accepts orders from within the state and ships merchandise into the state. In fact, it is clear from the wording of the statute that it was the intention of the legislature to require a license from a dealer at wholesale within the State of Montana, who maintains a place of business within the State of Montana. Under this construction and interpretation of the act, it is not necessary to consider the question further.

Assuming, however, that it was the intention of the legislature to impose a license upon a dealer at wholesale outside of the State of Montana, who accepts orders from within the state and who ships merchandise into the state, it is my opinion that such statute would be inoperative and unconsti-

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Commerce.**

HELD: Chapter 164, Laws of 1933, applies to dealers in wholesale who have place of business in state. A law

tutional for the reason that business of this character constitutes interstate commerce and that privilege cannot be taxed by the state. Section 147 of 12 C. J., p. 106: "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 nonresident 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." Many cases are cited under footnote 91.

A leading case is *Robbins v. Shelby County Taxing Dist.*, 120 U. S. 489, 7 S. Ct. 592, 30 L. Ed. 694. In this case the State of Tennessee sought to impose a license tax upon drummers and persons not having a regular licensed house of business in the taxing district, who offered to sell or who sold goods, wares and merchandise by sample. The merchandise was manufactured and shipped from the State of Ohio. In that case, while the court recognized the power of the state to pass inspection laws to secure the due quality and measure of products and commodities and laws to regulate or restrict the sale of articles deemed injurious to the health or morals, the principle of law was stated on page 497 that "the negotiation of sales of goods which are in another state, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce." It was held in that case to be beyond the power of the state to impose a license tax upon the privilege of conducting such business. (See also: *Crenshaw v. Arkansas*, 227 U. S. 389, 395, 33 S. Ct. 294, 57 L. Ed. 565; *Looney v. Crane Co.*, 245 U. S. 178, 188 62 L. Ed. 230, 38 Sup. Ct. Rep. 85; *Chicago etc. R. R. Co. v. Harmon*, 89 Mont. 1; 295 Pac. 762; 61 C. J. 338, sec. 326 et seq.; 37 C. J. 206, sec. 57 et seq.; id. 173, sec. 13.)

It is my opinion that the construction given this act herein is the only one possible, but if it is possible to give it two different constructions, one of which would render the act constitutional and the other of which would render it unconstitutional, that construction which would render the act constitutional must be adopted.