

Opinion No. 500**Licenses—Wholesalers—Interstate
Commerce—Order, Definition of.**

HELD: One who does not take orders but conducts a wholesale business from a truck is a dealer at wholesale and subject to the provisions of Chapter 164, Laws of 1933.

What constitutes an order for merchandise to be shipped into the state must be determined by the facts and circumstances of each case, but a request for fruit and vegetables, without quality, quantity, amount, price, etc., would hardly amount to an order.

March 24, 1934.

Concerning your further inquiry relative to the "wholesale license law" I wish to advise that if the facts are as you state them in your letter, to-wit: the trucker does not take and fill orders and does not maintain a place of business outside the state where he

keeps his merchandise, but simply buys merchandise upon the open market wherever he may be able to find it, loads in onto his truck, brings it into the State of Montana and sells it direct from his truck, then in my opinion he would be a "dealer at wholesale" within the meaning and subject to the provisions of Chapter 164, Laws of 1933.

You have asked for a definition of the word "order" and whether a request or "order" for "fruit and vegetables" without specifying quantity, quality, price, date of delivery, etc. would be within the meaning of an "order" as used by the authorities cited in our opinion No. 294, under date of August 8th, 1933. It is my opinion that this would hardly be a bona fide order but would seem to amount to no more than the mere subterfuge to evade the law. An acceptance of such a request or so-called "order" would be too indefinite to constitute a binding contract upon the merchant who made it. It is difficult if not impossible to give an exact definition of an order which would be applicable in all cases. The facts and circumstances of each case would have to be considered before we could determine its legal effect.