

Section 2429.19 provides in part:

"Every application (for a license) made by an itinerant vendor taking orders for future delivery and collecting advance payments . . . shall be accompanied by a bond in the penal sum of \$250.00."

In determining the application of Section 2429.19, it is important to note the provisions of Section 2429.23, Revised Codes of Montana, 1935:

"Nothing in this Act contained, is intended to operate so as to interfere with the power of the United States to regulate commerce between the states as such power is defined by the supreme court of the United States."

In 40 American Jurisprudence 929, the text states:

"It is well settled that statutes or ordinances which go beyond the regulation of actual peddling and provide that there may be no soliciting for orders or sales by samples, unless the solicitor has secured a license, are inapplicable to the soliciting for orders for goods which are to be shipped from one state into another, since such transactions are directly connected with interstate commerce. . . . A state statute which requires persons going from place to place soliciting orders for goods for future delivery, and receiving payment or any deposit of money in advance, to secure a license and give bond conditioned for final delivery of goods ordered, violates the commerce clause of the Federal Constitution insofar as it is made to apply to agents soliciting orders in a state, to be forwarded to a manufacturer in another state, to be filled by C. O. D. shipments, and it is immaterial that the solicitors traveled at their own expense, and received their compensation through retention of advance partial payments on goods ordered."

In 12 Corpus Juris at page 106, the principle is stated thus:

"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

#### Opinion No. 153.

#### Licenses—Itinerant Vendors, license of —Taxes.

Held: A license tax cannot be imposed on an itinerant vendor who takes orders for out of state concerns who ship directly to the purchaser and that Section 2429.19, Revised Codes of Montana, 1935, does not apply to such a vendor.

December 4, 1943.

Mr. William F. Shallenberger  
County Attorney  
Sanders County  
Thompson Falls, Montana

Dear Mr. Shallenberger:

You have requested my opinion regarding the application of Section 2429.19, Revised Codes of Montana, 1935, to an itinerant vendor who takes orders for future delivery after receiving a cash deposit, for out of state concerns who ship directly to the customer.

the time of sale and the contract of sale being accepted or approved in the state of the principal."

The Supreme Court of the United States upheld this principle in the case of *Crenshaw v. Arkansas*, 227 U. S. 389.

It is apparent that an itinerant vendor selling goods under the facts you submitted does not come within the provisions of Section 2429.19. This office so held previously in Volume 10, Report and Official Opinions of the Attorney General, page 203.

It is therefore my opinion that a license tax cannot be imposed on an itinerant vendor who takes orders for out of state concerns who ship directly to the purchaser and that Section 2429.19, Revised Codes of Montana, 1935, does not apply to such a person.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General