

CHAPTER 329

HAWKERS, PEDDLERS, AND TRANSIENT MERCHANTS

329.01 TRANSIENT MERCHANT.

L. 1909, c. 248, is unconstitutional as a police regulation being class legislation and is also unconstitutional as a tax measure in that the tax imposed upon the occupation of peddling does not fall equally and apply uniformly on all members of the class. Permanent merchants are those who have a permanent place of business while transient merchants are transitory or temporary traders who have no intention of locating permanently. This distinction is marked and is determined by the manner in which the sale of goods is conducted. State ex rel v Par, 109 M 150, 123 NW 408.

329.02 HAWKERS AND PEDDLERS; LICENSE REQUIRED.

The business of hawker or peddler is so far a legitimate and moral business that the legislature can regulate it only for the purpose of preventing it from becoming a nuisance; and for that purpose the distinction attempted to be made between peddling between manufacturer, mechanic, nursery man, farmer, and butcher, as aforesaid, and the peddling of the same articles between purchaser from these parties constitute no proper basis for classification, and the classification so attempted is founded on no proper or natural distinction but is arbitrary and contravenes Minnesota Constitution, Article 4, Sections 33 and 34. State ex rel v Wagner, 69 M 206, 72 NW 67.

A veteran calling from house to house selling a household appliance on contract for future delivery is not subject to the provisions of this section. OAG July 23, 1946 (290-J-10).

Validity of legislation imposing a tax on solicitation of orders for future delivery as it relates to interstate commerce. 18 MLR 475.

329.06 RIGHT OF MUNICIPALITIES TO REGULATE.

An ordinance which requires "transient merchants" selling or displaying for sale "natural products" of the farm, including such commodities as cattle, hogs, sheep, veal, poultry, eggs, butter, and fresh or frozen fish, to be licensed and to file a bond, and exempts from its provisions (a) persons selling produce raised on farms occupied and cultivated by them; and (b) persons selling milk, cream, fruit, vegetables, grain, or straw, is violative of state and federal constitutional prohibitions against class legislation. State v Pehrson, 205 M 573, 287 NW 313.

Neither the state nor any of its subdivisions may regulate or restrain that which from its nature should be under control of national authority and as such should be free from restriction save as it is governed in the manner that the congress constitutionally ordains. Nor may the state tax interstate commerce either by laying the tax upon the business which constitutes such commerce or the privilege of engaging in it or upon the receipts, as such, derived from it. The conviction of the defendant for violation of an ordinance of the city of Waseca regulating and licensing hawkers, peddlers, and canvassers is reversed. City of Waseca v Braun, 206 M 154, 288 NW 229.

Validity of legislation imposing a tax on solicitation of orders for future delivery as it relates to interstate commerce. 18 MLR 475.

329.08 FARM AND GARDEN PRODUCTS EXCEPTED.

A city ordinance prohibiting peddling without a license which exempts "vendors of farm produce and green produce and vegetables," is void. State ex rel v Ramage, 109 M 302, 123 NW 823.

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329.09 CITIES OF FIRST CLASS.

Decisions relating to city ordinances: City of Duluth v Krupp, 46 M 435, 49 NW 235; City of St. Paul v Briggs, 85 M 290, 88 NW 984; City v Jensen, 93 M 88, 100 NW 644; City v Pehrson, 205 M 573, 287 NW 313.

329.11 APPLICATION FOR LICENSE; ISSUANCE; FEE.

Section 197.59, exempting veterans from payment of hawkers and peddlers license, does not apply to a transient merchant license. OAG Aug. 21, 1946 (290-J-10).

329.16 DISPOSAL OF FEES.

"Receiving from villages ten per cent of the fees paid to them for liquor licenses, from auctioneers and peddlers the fees paid for their respective licenses, and the money paid for the use or sale of county property, was wholly outside the scope of the official authority of the county auditor, and his sureties are not liable for his misappropriation of such funds. The county treasurer was the only officer authorized to receive such payments." Co. of Mower v Amer. Bonding Co. 133 M 274, 158 NW 394.