

1510.

PEDDLER—FEE REQUIRED WHERE USING AUTOMOBILE TRUCK—  
 LICENSE IN ONE COUNTY PERMITS PEDDLING OVER ENTIRE  
 STATE—COUNTY COMMISSIONERS MAY ANNUALLY CONTRACT  
 WITH HOSPITAL ASSOCIATION FOR TREATMENT OF INDIGENT  
 SICK AND DISABLED.

## SYLLABUS:

1. *A peddler using an automobile truck is required by section 6349, General Code, to pay a fee of twenty-eight dollars.*

2. *By virtue of section 6347, General Code, a peddler is required to take out a license in only one county. This license permits him to peddle his stock in trade over the entire state, subject to the right of municipalities to require an additional license.*

3. *Under the provisions of section 3138-1 General Code, a board of county commissioners may enter into an annual contract with a hospital association for treatment of indigent sick and disabled, provided the consideration is reasonably commensurate with the services performed. Opinions of the Attorney General for 1929, Vol. III, page 1784, approved and followed.*

COLUMBUS, OHIO, September 5, 1933.

HON. ARLO L. CHATFIELD, *Prosecuting Attorney, McArthur, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“I find it necessary to refer to you for opinion the following questions:

First: Since this County is spending a considerable amount of money for poor relief, there has been a growing number of ‘Stores on wheels’ operating in the County and taking the business of merchants who have valiantly and courageously stood by our people on credit in the past. Many of our people feel that now that there is an opportunity for them to profit to some extent by the expenditure of taxes which they substantially make possible, it is unfair to allow most, or a large part of the said money to be taken out of the County by non-residents and non-taxpayers of the County. Hence my question refers to the interpretation of General Code sections 6347 et seq. relating to the licensing of peddlers and itinerant vendors. Under 6349 license fees are placed upon a basis contemplating horse drawn vehicles, whereas our peddlers use automobiles and trucks. How are the fees in such cases to be set? Under favor of section 6347 the license mentioned seems to be for a State-Wide privilege, and is granted upon the filing of a statement of his stock in trade for taxation purposes and upon the paying to the Treasurer of the County THE PROPORTIONATE AMOUNT OF TAXES ON SUCH STOCK IN TRADE IN CONFORMITY WITH LAW etc. Does this section contemplate the paying of tax in every County through which the licensee does business, and if so, how are the taxes to be computed. Are the sales in the County to be looked to? Or the stock brought into the County regardless of what is taken out?

If a peddler has a license from the County of his residence, must he have one issued by the Counties in which he does business? Or are the latter counties limited to proceeding against such person for failure to list his stock in trade for taxation by the County?

Second: Our County Commissioners are desirous of entering into a contract with a hospital for the treatment of all indigents under their control or for whom they are responsible, the object being to get such services at reduced rates. I am able to find no authority for such a contract, altho authority does exist for contracts relating to the hospitalization of *tuberculosis* patients, and for contracts with physicians for medicine and services. Your recent opinion upon the latter authority, of course, does not deal with my question. May our Commissioners enter into such a contract?"

Sections 6347, 6348, 6349 and 6353, General Code, read as follows:

Sec. 6347.

"When a person files with the auditor of a county, under oath, which may be administered by such auditor, a statement of his stock in trade in conformity with the law requiring the listing of such stock for taxation by merchants or others, and pays to the treasurer of such county the proportionate amount of taxes on such stock in trade in conformity with law, and complies with the terms set forth in section sixty-three hundred and forty-nine, such auditor shall issue to him a license to peddle such stock anywhere in this state."

Sec. 6348.

"A merchant or his agent desiring such license shall not be required to make the statement provided for in the next preceding section if such stock has been otherwise listed for taxation."

Sec. 6349.

"Before receiving such license the applicant, if intending to travel on foot, shall file with the county auditor the county treasurer's receipt for twelve dollars; if intending to travel on horseback or in a one-horse vehicle, he shall file such receipt for twenty dollars; if intending to travel in a two-horse vehicle, he shall file the receipt for twenty-eight dollars; or, if intending to travel in a boat, watercraft or on a railroad car, he shall file it for sixty dollars. He shall also pay to the auditor the sum of fifty cents as the auditor's fee for granting the license."

Sec. 6353.

"A license granted in conformity with this chapter shall authorize the person named therein to sell goods, wares and merchandise for one year from the date of the receipt of the treasurer, as a peddler or traveling merchant. Such person may take out a license to peddle for three months or six months, and pay for it proportionately in accordance with the provisions of section sixty-three hundred and forty-nine."

With reference to that part of your first question relating to the method of computing the fee to be charged for automobiles and trucks, I call your attention to an opinion appearing in the Annual Report of the Attorney General for 1913, Vol. I, page 137. The syllabus of that opinion reads as follows:

"Section 6347, General Code, requires compliance with section 6349, General Code, for the obtaining of a peddler's license, and said section

6349, General Code, provides only for peddlers on foot or with a one-horse vehicle or a two-horse vehicle, or a boat, watercraft or railroad car, and prescribed a specific fee for each mode of peddling. Section 6355, General Code, provides a penalty for peddling without a license.

Since an automobile truck resembles more closely a two-horse vehicle than it does any of the other modes of locomotion, unless the principle that a law becomes applicable to new inventions as new inventions come into use, without special application thereto, a peddler intending to travel on an automobile truck, shall be required to pay the license provided for a two-horse vehicle."

This opinion was approved by my immediate predecessor in Opinion No. 4885, appearing in Opinions of the Attorney General for 1932, Vol. III, page 1528. I concur in the holding of these two opinions.

With reference to the remainder of your questions referring to the licensing of peddlers, an examination of the above mentioned sections leads to the conclusion that it is only necessary to secure a license in one county, which would be good over the entire state. It makes no difference whether the applicant secures this license from the county of his residence or from another county. The provisions of section 6347, supra, entitle a person who has obtained a license to peddle his stock in trade "anywhere in this state." The question of residence is immaterial. As stated in Opinion No. 4885, supra, "I am unable to see where it would make any difference, so far as the necessity for licenses is concerned, whether or not the peddler lives in Jackson or Pike County." I call your attention to the fact that sections 3616, 3670 and 3672, General Code, empower municipal corporations to license peddlers, which license is in addition to that required by section 6347, et seq., supra.

In view of my conclusion that a compliance with section 6347 merely requires an applicant to secure a license in any county of this state, and to list his stock in compliance with the law requiring the listing of such stock for taxation, it is unnecessary to answer the other questions presented by your first inquiry.

I come now to your second question, relative to the power of a board of county commissioners to enter into a contract with a hospital for treatment of indigents, under their control, for whom they are responsible. I call your attention to section 3138-1, General Code, which reads as follows:

"That the board of county commissioners of any county may enter an agreement with one or more corporations or associations organized for charitable purposes, or with one or more corporations or associations organized for the purpose of maintaining and operating a hospital in any county where such hospital has been established, for the care of the indigent sick and disabled, excepting persons afflicted with pulmonary tuberculosis, upon such terms and conditions as may be agreed upon between said commissioners, and such corporations or associations, and said commissioners, shall provide for the payment of the amount agreed upon, either in one payment or installments, or so much from year to year as the parties stipulate. Nothing herein shall authorize the payment of public funds to a sectarian institution. County commissioners shall have authority to employ the necessary and properly qualified employes to assist them in carrying out all responsibilities devolving upon them by reason of any agreement, or agreements, entered into in accordance with the provisions of this section."

This section was construed in an opinion found in Opinions of the Attorney General for 1929, Vol. III, page 1784. The syllabus of that opinion is as follows:

“Under the provisions of Section 3138-1, General Code, a board of county commissioners may enter into an annual contract with a hospital association for treatment of indigent sick and disabled, provided the consideration is reasonably commensurate with the services performed.”

I concur in the holding of the above opinion.

It is therefore my opinion, in specific answer to your inquiries, that:

1. A peddler using an automobile truck is required by section 6349, General Code, to pay a fee of twenty-eight dollars.

2. By virtue of section 6347, General Code, a peddler is required to take out a license in only one county. This license permits him to peddle his stock in trade over the entire state, subject to the right of municipalities to require an additional license.

3. Under the provisions of section 3138-1, General Code, a board of county commissioners may enter into an annual contract with a hospital association for treatment of indigent sick and disabled, provided the consideration is reasonably commensurate with the services performed. Opinions of the Attorney General for 1929, Vol. III, page 1784, approved and followed.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

1511.

APPROVAL, RESERVOIR LAND LEASE—CHARLES R. DOLL.

COLUMBUS, OHIO, September 5, 1933.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—The conservation division in your department, acting through the chief of the bureau of inland lakes and parks, has submitted for my examination and approval a reservoir land leased in triplicate executed by the conservation commissioner to one Charles R. Doll of Columbus, Ohio. This lease is one for a term of fifteen years and the same provides for an annual rental of twenty-four dollars payable in semi-annual installments of twelve dollars each.

Upon examination of this lease, I find that the same has been properly executed by the conservation commissioner and by Charles R. Doll, the lessee therein named. I further find, upon examination of the provisions of the lease and of the conditions and restrictions therein contained, that the same are in conformity with the section of the General Code under the authority of which the lease is executed, and with other statutory enactments relating to leases of this kind. I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*