

1936 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1936)
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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TITLE IV. GENERAL PROVISIONS

ARTICLE I.

7235. Definitions and meaning of terms.

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7237. Reasonable time, what constitutes.

Whether farmer living 7½ miles from town presented a check for payment within reasonable time, held for jury. 181M104, 231NW789.

Holder of check and collecting banks, held to have used due diligence in presenting check for payment before failure of drawee bank. 181M212, 231NW928. See Dun. Dig. 987, 7445.

7239. Application of act.

Negotiable Instrument Act did not repeal §7247 relating to obtaining signature by deceit, trick or artifice. Wismo Co. v. M., 186M593, 244NW76.

If facts making a defense under §7247 are established a purchaser of note in due course is not protected. M & M Securities Co. v. D., 190M57, 250NW801. See Dun. Dig. 1019.

MISCELLANEOUS PROVISIONS

7247. Instrument obtained by fraud.

Evidence sustained verdict against maker and guarantor as against claim of fraud. 171M216, 213NW902.

"Trick or artifice" must deceive, and defense was without merit where there was affirmance by signer after knowledge of the precise character of the instrument. 172M126, 214NW924.

Evidence held to show that misrepresentations were made by payee in note. 174M115, 218NW464.

Finding that there was no fraud or misrepresentation by cashier of bank in transaction in which note was given held sustained by evidence. 174M261, 219NW93.

Evidence held sufficient to establish defense under this section, which creates a new defense that is not lost by the mere fact that the payee or holder of the note becomes insolvent and goes into the hands of a receiver after its execution. Simerman v. H., 178M31, 225NW913.

This section was not repealed by Negotiable Instrument Act. Wismo Co. v. M., 186M593, 244NW76. See Dun. Dig. 1019.

Evidence held to sustain finding that signature to note was obtained by deceit and artifice without negligence on part of maker. Wismo Co. v. M., 186M593, 244NW76. See Dun. Dig. 1019.

In action on notes, fraud held for jury. Wiebke v. E., 189M102, 248NW702. See Dun. Dig. 1019.

Burden is upon maker of showing that his signature was obtained by fraud as to nature and terms of contract; that he did not believe instrument to be a promissory note; and that he was not negligent in signing without knowledge. M. & M. Securities Co. v. D., 190M57, 250NW801. See Dun. Dig. 1019.

If facts making a defense under §7247 are established, a purchaser of note in due course is not protected. Id. Prejudicial error was not committed in permitting defendant to introduce testimony of fraud sufficient as a defense at common law without first producing affirmative proof that plaintiff was not a holder in due course and so making an issue for jury upon evidence tendered by plaintiff. Id. See Dun. Dig. 424.

Where defense to note is based on actual or common-law fraud merely consisting of misrepresentations as to merchandise sold, proof of absence of negligence is not essential as in case of note obtained by fraudulent trick or artifice. Id. See Dun. Dig. 1018.

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CHAPTER 52

Partition Fences

7248. Fence viewers.

Establishment of center of section of land. 172M388, 215NW426.

7250. Occupants to maintain.

Land in part woodland, meadow and slough, adjoining other lands not under plow, held not "improved" so as to impose obligation to build joint line fence. Op. Atty. Gen., Apr. 28, 1932.

A village must maintain its share of partition fence as to land outside village limits used in connection with water system of village operating in both a proprietary capacity and governmental capacity. Op. Atty. Gen., Mar. 24, 1934.

There can be no partition fence between land separated by a cartway established either under the statute or by dedication as a public road, but if third person using the way has merely a license, there may be a partition fence. Op. Atty. Gen. (377b-10(e)) (631h), July 5, 1934.

CHAPTER 53

Estrays and Beasts Doing Damage

BEASTS DOING DAMAGE

7274. Who may distrain.

Where federal government purchased and branded distressed cattle in drouth areas and turned them over to state emergency relief administration for grazing and they were contracted out to individuals under an agreement that they be grazed and cared for, owner of property damaged by such animals may not hold them in attempt to force collection of damages; such cattle belonging to the state. Op. Atty. Gen. (400a), Sept. 28, 1934.

7275. Notice to owner.

Notice is not waived by a general statement of the owner of the animals to one taking them up, "to have the damages appraised and he would pay for them." Pruka v. M., 182M421, 234NW641. See Dun. Dig. 277, 10134.

The notice required in proceedings to distrain animals doing damage is a written notice and is jurisdictional. Pruka v. M., 182M421, 234NW641. See Dun. Dig. 277.

MISCHIEVOUS DOGS

7285. Keeping after notice.

Owner of dog becomes liable on receiving notice by seeing the forbidden act or by information from any other person, oral or written. Op. Atty. Gen., Oct. 30, 1929.

7286. Dogs worrying livestock or poultry.

Dogs may be killed under statutory authority when they are nuisances, G. S. 1923, §7287, or when they menace live stock or poultry, G. S. 1923, §7286, as amended. 175M368, 221NW430.

Common-law rule is not abrogated by this section. 175M368, 221NW430.

7287. Nuisance, when—Procedure.

174M457, 219NW770.

Dogs may be killed under statutory authority when they are nuisances, G. S. 1923, §7287, or when they menace live stock or poultry, G. S. 1923, §7286, as amended. 175M368, 221NW430.

Common-law rule is not abrogated by this section. 175M368, 221NW430.

RUNNING AT LARGE OF CERTAIN ANIMALS

7297-1. County board to license dogs.—The Board of County Commissioners of any county, by a majority vote, may provide for the licensing and regulating the running at large of dogs, and create a live-stock indemnity fund to be handled and disbursed as hereinafter set forth. After the plan therefor shall have been in operation in any county for at least one year, the Board of County Commissioners thereof may by a majority vote, abandon the same. In any county containing a city of the first class or a city of the second class located in more than one county the board of county commissioners shall exclude from the operation of this act such city of the first class or a city of the second class located in more than one county. (Act. Apr. 21, 1931, c. 295, §1; Jan. 24, 1936, Ex. Ses., c. 69.)

7297-2. Owners to obtain licenses.—The owners of all dogs six months old or over, except dogs kept in kennels, in all counties providing for the licensing

and regulating the running at large of dogs as provided for in Section one of this act, shall annually obtain a license therefor, as herein provided, and it shall be unlawful for the owner of any dog six months old or over to allow such dog to run at large without being so licensed or without wearing the license tag herein provided for. (Act Apr. 21, 1931, c. 295, §2.)

7297-3. Who are owners.—For the purposes of this act, the term "owner" shall, in addition to its ordinary meaning, include any person who keeps or harbors a dog. (Act Apr. 21, 1931, c. 295, §3.)

7297-4. County auditor to issue license.—The owner of a dog for which a license shall be required, shall on or before the 15th day of July, of each year apply to the auditor of the county in which such owner resides for a license for each dog owned by him. (Act Apr. 21, 1931, c. 295, §4.)

7297-5. Application.—Application for license shall be made after July 15th and at any time, for a dog which has come into the possession or ownership of the applicant or which has reached the age of six months after said date. (Act Apr. 21, 1931, c. 295, §5.)

7297-6. Contents of application.—Such application shall be in writing on blank provided therefor by the county auditor and shall state the breed, sex, age, color, markings and name, if any, of the dog, and if a female, whether or not spayed, and the address of the owner and shall be signed by him, or a duly authorized agent of such owner. (Act Apr. 21, 1931, c. 295, §6.)

7297-7. License fee.—The annual license fee shall be \$1.00 for each male or spayed female dog and \$3.00 for each unspayed female dog. Such fee shall accompany the application for license. (Act Apr. 21, 1931, c. 295, §7.)

7297-8. Auditor to deliver license.—The county auditor, upon receipt of such application and license fee, shall deliver or mail to the applicant a license which shall be in form of a metal tag stamped as follows:

- (a) The year in which it is issued.
- (b) The name of the County in which it is issued.
- (c) The serial number as shown by the record book in the office of the county auditor. (Act Apr. 21, 1931, c. 295, §8.)

7297-9. License to be attached to collar.—Such license tag shall be attached by the owner to a substantial collar, and during the term of the license shall at all times be kept on the dog for which the license is issued. (Act Apr. 21, 1931, c. 295, §9.)

7297-10. Licenses to expire July 15.—All licenses shall expire on July 15th of each year following the date of issuance. (Act Apr. 21, 1931, c. 295, §10.)

7297-11. Licenses may be transferred.—When the permanent ownership of a dog is transferred, the license may be transferred by the county auditor by notation on the license record, giving the name and address of the new owner. (Act Apr. 21, 1931, c. 295, §11.)

7297-12. Owner moving to new county.—When a dog licensed in one county is permanently transferred to another county, the owner thereof shall surrender the original license tag to the auditor of the county to which such dog is removed, providing such latter county has availed itself of the provisions of this act as provided in section one thereof. The auditor shall thereupon preserve the surrender tag, and, without license fee, issue a new license tag. The auditor shall note on the license record the fact that the newly issued license tag is issued to effect a transfer of, and is in lieu of such surrender license tag. (Act Apr. 21, 1931, c. 295, §12.)

7297-13. Auditor to collect transfer fee.—The auditor on making any transfer shall collect a fee of 25 cents, which shall with all license fees, penalties and

finer that are collected in such county, be paid into the county treasury to the credit of the Live Stock Indemnity Fund, which is hereby provided, and hereinafter called the Indemnity Fund. For the performance of his duties under this act, in addition to his compensation otherwise fixed by law, the auditor shall receive such compensation, payable from the indemnity fund, as may be fixed by the County Board at its annual meeting in January, of each year. (Act Apr. 21, 1931, c. 295, §13.)

7297-14. Licenses may not be transferred to another dog.—A license tag issued for one dog shall not be transferable to another dog. (Act Apr. 21, 1931, c. 295, §14.)

7297-15. Duplicate licenses.—Upon the filing of an affidavit that the license tag has been lost or destroyed, the owner may obtain another tag upon the payment of 25 cents. The auditor shall enter in the license record the new number assigned. (Act Apr. 21, 1931, c. 295, §15.)

7297-16. Assessor to list dogs.—Each assessor shall, at the time of listing personal property for assessment, list and return to the county auditor the names of all persons who own or harbor dogs, and indicate on such lists whether the dogs are male, female or spayed, and the number thereof. For such service the assessor shall receive, from the indemnity fund, in addition to any and all other fees or compensation allowed by law, the sum of ten cents for each dog reported, which fees shall be paid in full when the return is made. (Act Apr. 21, 1931, c. 295, §16.)

7297-17. Penalties for non-payment of license.—All license fees shall become delinquent on the first day of September of the year in which they are due and payable and a penalty of \$1.00 shall be added to each unpaid license on and after such date. (Act Apr. 21, 1931, c. 295, §17.)

7297-18. Names of unlicensed dog owners to be published.—The county auditor shall between the first and the 20th days of September cause to be published once in the official newspaper of the county, a list of names of all the owners of unlicensed dogs as shown by a comparison of his license record and the assessor's returns, or as otherwise ascertained or known by him. (Act Apr. 21, 1931, c. 295, §18.)

7297-19. Owner to appear.—Such publication shall be notice to each owner that he may appear before the county auditor on or before the 30th day of September, following, and by affidavit show cause why the license fee and penalty should not be assessed against him as a tax, and no exemption from such taxation shall be granted except on the affidavit of such owner, which shall be filed and preserved by such auditor. (Act Apr. 21, 1931, c. 295, §19.)

7297-20. Cost of publication.—The cost of publishing the list of delinquent owners shall be paid from the indemnity fund upon the filing of proper proof of publication. (Act Apr. 21, 1931, c. 295, §20.)

7297-21. Auditor to certify list to county treasurer.—Immediately following September 30th, the auditor shall, except as to persons to whom he has granted exemptions, certify to the county treasurer:

- (a) The name of the owner of each unlicensed dog.
- (b) The number of dogs so owned by said person and the sex thereof.
- (c) The amount of the unpaid license fee, plus a penalty of \$1.00 for each dog. (Act Apr. 21, 1931, c. 295, §21.)

7297-22. Auditor to include license fee in tax.—After issuance of said certificate, the auditor shall at once enter, as a tax against each person owning dogs, except to persons who have been granted exemptions as herein provided, the amount of the tax and penalty as is in said certificate stated. Said tax and penalty shall be attended with the same consequences and be

certified to the treasurer and be collected in the same manner as personal property taxes for the current year. (Act Apr. 21, 1931, c. 295, §22.)

7297-23. Violation a misdemeanor.—The violation of any of the foregoing provisions relating to listing of dogs for assessment by the owners thereof or the removal of a license tag from a dog prior to the expiration of the license, by any person who is not the owner thereof or his agent, shall be a misdemeanor. (Act Apr. 21, 1931, c. 295, §23.)

7297-24. County treasurer to receive funds.—The auditor shall make payment to the county treasurer of all funds received by him hereunder on the first day of each month. The treasurer shall keep said funds, together with all tax collections and penalties and all fines imposed for the violation of this act as herein provided, as the livestock indemnity fund, which is hereby created in each county coming within the provisions of this act. (Act Apr. 21, 1931, c. 295, §24.)

7297-25. Auditor to keep record of licenses.—The county auditor shall keep a book to be known as the record licenses which shall show:

(a) The serial number and date of each application for license.

(b) The description of the dog as specified in the application, together with the name of the owner of said dog.

(c) The date when each license tag is issued and the serial number of such tag.

(d) The amount of all fees, licenses and penalties, and costs and fines paid to him.

(e) Such other data as the law may require. (Act Apr. 21, 1931, c. 295, §25.)

7297-26. Auditor to prepare forms.—All forms for blanks, records, books and tags, including proper columns in the assessor's books in which to note the ownership of dogs, shall be prepared by the auditor. All such blanks, books, tags and supplies shall be furnished by the county and paid for out of the indemnity fund. (Act Apr. 21, 1931, c. 295, §26.)

7297-27. Peace officers may kill dogs.—It shall be lawful for peace officers within their respective jurisdictions, to kill any dog for which a license is required, when such dog is not wearing a collar with a license tag showing license then to be in effect, attached to such collar as herein provided. (Act Apr. 21, 1931, c. 295, §27.)

7297-28. Dogs may be killed—when.—It shall be lawful for any person to kill a dog, although licensed and wearing a collar with license tag attached, when such dog is caught in the act of worrying, chasing or injuring sheep or other livestock, including poultry. (Act Apr. 21, 1931, c. 295, §28.)

7297-29. Owner to be liable.—The owner of any dog, whether licensed or not, shall be liable to the party injured for all damages done by such dog, except when the party damaged is doing an unlawful act directly contributing to said injury. This section shall not apply to any damage done by a dog affected with hydrophobia unless the owner of such dog has reasonable ground to know that such dog was afflicted with said malady and by reasonable effort might have prevented the injury. (Act Apr. 21, 1931, c. 295, §29.)

Board cannot make statute retroactive so as to authorize payment for damage or injury to livestock occurring prior to adoption of appropriate resolution. Op. Atty. Gen., May 15, 1931.

7297-30. Claims for damages may be filed.—Any person damaged by the killing or injury of his livestock, including poultry by wolves or by dogs not owned by said person, may within ten days, from the time he or his agent has knowledge of such killing or injury, and not thereafter, file with the county auditor in which such killing or injury occurred a claim for such damage. (Act Apr. 21, 1931, c. 295, §30.)

Where county board adopted act on November 13, 1934, claims arising between January 1, 1935, and July 15, 1935, were eligible to participate in indemnity funds, though owners of dogs did not have to procure licenses until July 15, 1935. Op. Atty. Gen. (146d-2), July 24, 1935.

7297-31. Claims to contain detailed statement.—Such claims for damage shall state the amount of the damage and shall contain a detailed statement of the facts attending the killing or injury and be verified [Sic] by affidavit of at least two disinterested persons not related to claimant. (Act Apr. 21, 1931, c. 295, §31.)

7297-32. Claims to be presented to county board.—The county auditor shall present such claim to the County Board which shall act thereon within a reasonable time, and allow such part thereof as it may deem just, but not exceeding 80% of the actual loss or damage sustained. When a claim is allowed, the value of each animal or fowl killed or injured shall be entered of record. (Act Apr. 21, 1931, c. 295, §32.)

Claims may not be accepted and paid out of fund after board has abandoned provisions of act. Op. Atty. Gen., Mar. 15, 1933.

7297-33. Warrants in payment of claims.—Warrants in payment of claims shall be issued payable January 1st following their issuance and not before, and to be paid out of the livestock indemnity fund. (Act Apr. 21, 1931, c. 295, §33.)

7297-34. Auditor to certify amount to treasurer.—The auditor shall, prior to the first Monday in January, of each year, certify to the treasurer an itemized list of all warrants issued during the preceding year on said indemnity fund, except warrants issued to pay the fees of assessors, and compensation of the county auditor and the necessary cost of publication. If said fund is sufficient in amount, the treasurer shall pay said warrants on presentation, but if it is insufficient in amount to pay all warrants in full, then he shall pro rata the same, as compared and certified by the county auditor, and pay only the pro rata share thereof. (Act Apr. 21, 1931, c. 295, §34.)

7297-35. County board to transfer excess to revenue fund.—When the balance in said indemnity fund, after payment of all warrants issued in any one year, exceeds the sum of \$500.00, the county board may by resolution direct and order the excess thereof transferred to the general revenue fund of the county. If the amount in the indemnity fund is insufficient in any one year to pay all duly allowed claims and the other items properly payable out of said fund as hereinbefore provided, the county board shall transfer from said general revenue fund an amount, not exceeding the amount previously transferred thereto from said indemnity fund, sufficient funds to pay the unpaid balance of said warrants. (Act Apr. 21, 1931, c. 295, §35.)

Upon abandonment of act by board fund may be transferred to general revenue fund. Op. Atty. Gen., Mar. 15, 1933.

7297-36. Provisions separable.—In the event that any section, provision or part of this act shall be declared unconstitutional, it shall not in any way affect any other section, provision or part thereof. (Act Apr. 21, 1931, c. 295, §36.)

7297-37. Act supplemental.—This act is supplemental to all other laws relating to dogs, and to all laws relating to taxation of dogs as personal property, and shall not be construed as to modify, repeal or in any wise affect any part or provision of any such laws nor so as to prevent municipalities from prohibiting or licensing or regulating the running at large of dogs within their respective limits as by law or ordinance now or hereafter provided. (Act Apr. 21, 1931, c. 295, §37.)

7297-38. County board authorized to pay claims for death or injury to live stock in certain cases.—The Board of County Commissioners of any county

in this state, where said county adopted Laws 1931, Chapter 295, licensing dogs, and later discontinued the same and transferred the money in the livestock indemnity fund provided for in said chapter to the general revenue fund of such county, shall have the authority to pay any claims arising by reason of the death or injury of livestock during the time that such law was in force in said county, or thereafter, from the general revenue fund in the proportion authorized by Laws of 1931, Chapter 295, Section 32 [7297-32], provided that such claims are presented to said board by January 1, 1934. (Act Apr. 15, 1933, c. 265.)

7297-30. Claims for death or injury to livestock.—The county board of county commissioners of any county in this state, where said county adopted Laws of 1931, Chapter 295 [§§7297-1 to 7297-38], licensing dogs, and later discontinued the same, and trans-

ferred the money from the livestock indemnity fund, provided for that purpose, to the general revenue fund of such county, shall have authority to pay any claims arising by reason of the death or injury of livestock during the time that such law was in force in said county, or thereafter, from the general revenue fund, in the proportion authorized by the Laws of 1931, Chapter 295, Section 32 [7297-32], provided that such claims are presented to said board prior to January 1st, 1936. (Act Apr. 24, 1935, c. 243, §1.)

7297-40. Limitation in amount of payments.—No claims shall be paid by said county board pursuant to this act which will exceed the total sum transferred from the livestock indemnity fund to the general revenue fund after deducting therefrom the amount of claims theretofore paid by such county under the provisions of this act or any heretofore existing law. (Act Apr. 24, 1935, c. 243, §2.)

CHAPTER 55

Hotels and Public Resorts

7312. Hotel and innkeepers to have safes.

Where a hotel accepted ring for delivery to a guest, a manufacturing jeweler who had long been one of its regular patrons, well known to the management, resulting bailment was for benefit of both bailor and bailee. *Peet v. R.*, 191M151, 253NW546. See Dun. Dig. 732, 4511. Guest having delivered a valuable ring to hotel, claim that no contract of bailment resulted because of hotel's ignorance of value of article was untenable. *Id.* See Dun. Dig. 728, 4511.

7316. Lien of inn keeper.

Right to lien upon baggage is not predicated on license. *Op. Atty. Gen.*, Mar. 19, 1934.

7318. Violation a misdemeanor.

There is no law making registration at a hotel under assumed name a crime. *Op. Atty. Gen.* (494a), Aug. 3, 1934.

7321. Equal rights in hotels, etc.

A complaint, charging that the plaintiff, on entering a cafeteria for the purpose of being served food, was told that he was too dirty to be served and would have to get out, and was refused service, when in fact his clothing and person were clean, does not state a cause of action either for slander or for deprivation of any civil rights. *Larson v. W.*, 183M28, 235NW393. See Dun. Dig. 4509.

CHAPTER 56

Auctioneers

7322. Licenses—Persons entitled to.

An ordinance for regulating of auctions and auctioneers, imposing a minimum license fee of \$250, is so unreasonable as to be invalid. *Orr v. C.*, 193M371, 258NW 569. See Dun. Dig. 716, 6794.

Specific delegation to a municipal corporation of power, by ordinance, to license and regulate auctions and auctioneers does not include, by implication, power to prohibit an established retail jeweler from selling his own merchandise at auction. *Id.*

Any person may be licensed as an auctioneer to make sales of livestock without regard to his residence. *Op. Atty. Gen.*, Dec. 10, 1929.

Minnesota cannot license a resident of Iowa. *Op. Atty. Gen.*, Feb. 27, 1931.

Non-residents from an adjoining state which does not issue auctioneers' licenses to residents of this state on the same basis as to residents of such adjoining state cannot be licensed to conduct auction sales of goods other than live stock. *Op. Atty. Gen.*, Feb. 3, 1932.

The holder of a void auctioneer's license could not rely upon such license as a defense to a criminal action. *Op. Atty. Gen.*, Feb. 3, 1932.

7327. Unlicensed sales.

Owner of goods may not sell them at auction without license. *Op. Atty. Gen.*, Oct. 5, 1929.

CHAPTER 56A

Hawkers, Peddlers, and Transient Merchants

HAWKERS AND PEDDLERS

7328. Engaging in business without license, etc.

Op. Atty. Gen., June 5, 1933; note under §4367. A salesman representing a wholesaler dealing exclusively with retail merchants and not consumers is not a "peddler." *Op. Atty. Gen.*, July 2, 1930.

One holding a wholesale produce dealer's license is not thereby relieved from the necessity of taking out a peddler's license. *Op. Atty. Gen.*, Mar. 12, 1931.

Persons who sell to dealers only are not peddlers. *Op. Atty. Gen.*, July 8, 1933.

7332. Right of municipalities, etc., to regulate.

Validity of municipal legislation imposing a tax on solicitation of orders for future delivery. 18MinnLaw Rev475.

TRANSIENT MERCHANTS

7337. Engaging in business without license.

175M374, 221NW428.

7338. License, how applied for and issued—Fees.

A transient merchant who has obtained a license in compliance with city ordinance is also compelled to obtain a license from county auditor under this section. *Op. Atty. Gen.*, Oct. 6, 1932.

7340. Transient merchant defined.

A farmer who buys products from other farmers in the vicinity and sells them must take out a peddlers' license. *Op. Atty. Gen.*, Oct. 14, 1931.

A farmer who occupies a stand on a public highway and sells the products of his garden and also products which he does not raise is a transient merchant who must have a license. *Op. Atty. Gen.*, Oct. 23, 1931.

City of Pipestone has authority to regulate "transient merchants" but not "transient dealers." *Op. Atty. Gen.*, Oct. 9, 1933.

A dry cleaner and dyer having a place of business in some other city and soliciting in neighboring towns is not a hawker, peddler or a transient merchant. *Op. Atty. Gen.* (477b-8), Apr. 25, 1935.

One who shipped furniture in car load lots to a local merchant for purpose of sale by the merchant at public auction is a transient merchant required to have a license if he does not part with title to the merchandise and no bona fide contract is made that would in any way bind local merchant to take goods. *Op. Atty. Gen.* (477b-21), May 16, 1935.

7342. Not applicable to certain sales.

A farmer who occupies a stand on a public highway and sells the products of his garden and also products