

File No. 11808 Continued.

OPINION.

nance prohibiting any person from selling any fresh fruits, vegetables, or other perishable articles, in the streets of Baltimore City, without a license.

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This Ordinance might seem to be in conflict with the above provision of the Code, in so far as it prohibits sales by persons holding County Licenses. The next Section of the City Code, however, provides that a license of \$25 is required for any person or persons, or firms, to sell fresh fruits, vegetables, or other perishable articles, from any wagon, within the limits of Baltimore City, and a license of \$15 is required from any person or persons selling said articles in said City from any basket.

I can see no impediment in the way of enforcing Section 51, in respect to sales from wagons, as it would seem to come directly within the language of the Court of Appeals, in the case of Salfner vs. the State.

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I, therefore, suggest that, as an Ordinance is already in force which carries out the views of the Collector of Water Rents and Licenses, such Ordinance be enforced, and I am not aware of any difficulties in the way of its enforcement.

The Ordinance to which I refer was approved April 15, 1890, and was apparently passed pursuant to an Act of the Legislature (Acts 1890, Chapter 100), which Act was approved March 14, 1890, and provides that

"The Mayor and City Council of Baltimore be and they are hereby authorized and empowered to license and regulate the sale of fresh fruits, vegetables and other perishable articles in the streets of Baltimore City."

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And it is further provided, that the Act shall take effect from the date of its passage.

This Act was not re-produced, literally, in the last City Charter, but the City is thereby broadly authorized to license, regulate etc. hawkers, peddlers, brokers, etc. This provision of the New Charter would seem amply sufficient to authorize the above Ordinance.

Yours truly,

(Signed) W.H.DeC. Wright,

Assistant City Solicitor.

As to criticism that \$25 is a tax and not a license. See Meushaw v. State, 109 Md., 89. Sec. 14 of sec. 6 of Charter, giving power to tax as well as license. (Also 7 of same).