



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 26, 1977

ATTORNEY GENERAL OPINION NO. 77- 283

Mr. David J. Harding
Wakeeney City Attorney
225 Main
Wakeeney, Kansas 67672

Re: Cities--Auctions--Licensing

Synopsis: Under Gilbert v. Mathews, 186 Kan. 672, 352 P.2d 53 (1960), a city may not disqualify itinerant merchants as a class from eligibility for a license to hold a public auction. The holding of auctions is a lawful business and occupation, which may be subjected to reasonable regulation in the exercise of the police power. However, it may not be prohibited absolutely by municipal ordinances enacted in the guise of licensing regulation by forbidding the issuance of such licenses to any person who is not a resident of the city.

* * *

Dear Mr. Harding:

You enclose a copy of a proposed amendment to Ordinance No. 1175 of the City of Wakeeney, concerning the licensing of auctioneers. Subparagraph (a) is added by the amendment, and as amended, the ordinance provides in pertinent part thus:

"Chapter VII. Licenses and Business
Regulations; Section 7-104. Auction Sales.

AUCTION SALES. Public auction sales
by any person, firm or corporation of a store
of goods, wares, or merchandise, or part there-
of, per day \$25.00

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(a) Provided, that such person, firm or corporation be a resident within the City limits of Wakeeney for a period of _____ or be actively engaged in the business of the selling of said goods, wares or merchandise of a similar nature for a period of _____, all prior to the date of the auction sale"

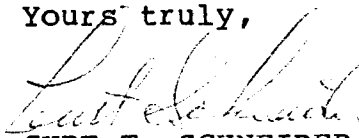
You inquire concerning this provision, which in effect forbids the licensing of itinerant merchants to conduct auctions.

In Gilbert v. Mathews, 186 Kan. 672, 352 P.2d 58 (1960), the court reviewed various provisions of the New Goods Public Auction Law, G.S. 1959 Supp. 58-1001 et seq., which was applicable only to itinerant merchants, and concluded that the act was "designed to be so oppressive and unreasonable that no applicant could comply with its terms." The court observed thus:

"The evidence is overwhelming that the so-called 'New Goods Public Auction Law' was enacted, not to reasonably regulate, but to altogether eliminate the sale of new merchandise by itinerant merchants at auction."
186 Kan. at 683.

The effect of the amended provision to the ordinance cited above appears to be identical, to ban itinerant merchants from holding auctions within the City of Wakeeney. In Gilbert, supra, the court made clear that the holding of auctions is a lawful business and occupation, which may be subjected to reasonable regulations in the exercise of the police power, but one which may not be prohibited absolutely. The effect of the amended ordinance is to render an entire class of persons ineligible to be licensed to hold and engage in auctions of goods, and in my judgment, the amended provision is void and unenforceable under Gilbert v. Mathews, supra.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj