



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 85-93

The Honorable Elaine R. Hassler  
State Representative, Sixty-Eighth District  
Route 2  
Abilene, Kansas 67410

Re: Counties and County Officers -- Licenses --  
Transient Merchant Licensing Act; Exemptions

Synopsis: "Flea markets" are exempt from the licensure requirements imposed by the Transient Merchant Licensing Act [L. 1985, ch. 94, §3(j)]. An antique show sponsored by a non-profit organization where out-of-state dealers sell antiques is a type of "flea market," and such dealers need not be licensed as transient merchants in order to transact business, nor does the organization itself need to be licensed. L. 1985, Ch. 94, §3(e). Cited herein: L. 1985, Ch. 94, §§2, 3, 8.

\* \* \*

Dear Representative Hassler:

You request our interpretation of Section 3 of the Transient Merchant Licensing Act (L. 1985, ch. 94). Specifically, you ask whether out-of-state antique dealers who participate in antique shows sponsored by non-profit organizations are exempt from the licensure requirements imposed by the act. You advise that while antique dealers profit from sales consummated at such shows, the sponsoring organization donates revenues from admission charges to charities.

The Transient Merchant Licensing Act imposes licensure requirements for "transient merchants" desiring to transact business in any county in this state. Section 2 of the act defines the terms "transient business" and "transient merchant" as follows:

"(b) 'Temporary or transient business' means any business conducted for the sale or offer for sale of goods, wares, merchandise or services which is carried on in any building, structure, motor vehicle or railroad car, or on any real estate, for a period of less than six months in each year.

"(c) 'Transient merchant' means any person who engages in, does or transacts any temporary or transient business in the state, either in one locality or in traveling from place to place in the state, and includes merchants who, for the purpose of carrying on such business, hire, lease, use or occupy any building, structure, motor vehicle, railroad car or real estate." (Emphasis added.)

Under the above-quoted definition, an out-of-state antique dealer is a transient merchant if the dealer does not operate at a business location in this state for at least six months in each year. Thus, unless otherwise exempted under the act, such a dealer must obtain a license prior to transacting business in any county in this state. Requirements for licensure are found in Section 8 of the act, and include a license fee of \$250 and a bond of the lesser of 5% of the whole value of the goods offered for sale or \$2,500.

In regard to antique shows sponsored by non-profit organizations, section 3(j) of the act provides in part that "flea markets" are exempted from licensure and regulatory requirements. The term "flea market" is not defined by the act, and we must therefore conclude that the legislature used the term according to its natural and ordinary meaning. Roda v. Williams, 195 Kan. 507 (1965), Syl. ¶3. In this regard, the term "flea market" has been defined as follows:

"A usu. open-air market for secondhand articles and antiques." Websters' New Collegiate Dictionary, 1973.


Under the above-quoted definition, the term "flea market" may properly be used to refer to either an indoor or outdoor market, although it "usually" refers to an outdoor market. In the absence of any indication to the contrary, it is our opinion that the legislature intended to exempt any market which could properly be referred to as a "flea market," including indoor markets. As the antique show about which you inquire appears to fit the definition of a flea market, i.e. a market for secondhand articles and antiques, in our opinion dealers who sell antiques at such a show are exempt from the requirements of the Transient Merchant Licensing Act.

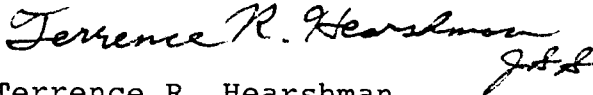
You also inquire if the sponsoring organization must be incorporated as a non-profit entity in order to claim the exemption under subsection (j) of Section 3. Alternatively, you ask if subsection (e) of the same section, which exempts a "general sale, fair, auction or bazaar sponsored by any church, religious or nonprofit organization," would apply. In our opinion, subsection (e) contains no requirement that the organization have completed the formalities of filing with the Secretary of State as a non-for-profit corporation under either K.S.A. 17-1701 et seq. or the general corporation laws of this state. Further, while subsection (e) would exempt the organization itself from being subject to the act, reference must be made to subsection (j) to determine if merchants participating in such sales can also be exempt. As we have concluded above, in the case of flea markets, a participating merchant would be exempt, given the intent of the legislature as expressed through the various exemptions set forth in the subsection. As a further indication of such intent, we note that while the Arkansas law from which the Kansas act was adapted contains the same reference to religious, charitable and non-profit groups as appears in subsection (e), the language of subsection (j) is unique to Kansas. See Ark. Stat. §§71-5604.

In conclusion, "flea markets" are exempt from the licensure requirements imposed by the Transient Merchant Licensing Act [L. 1985, ch. 94, §3(j)]. An antique show sponsored by a non-profit organization where out-of-state dealers sell antiques is a type of "flea market," and such dealers need not

be licensed as transient merchants in order to transact business, nor does the organization itself need to be licensed. L. 1985, Ch. 94, §3(e).

Very truly yours,

  
ROBERT T. STEPHAN  
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RTS:JSS:TRH:crw