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August 13, 1985

ATTORNEY GENERAL OPINION NO. 85- 99

William L. Fowler
Chase County Attorney
302 Broadway
P.O. Box 640
Cottonwood Falls, Kansas 66845

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

Synopsis: The provisions of the Transient Merchant Licensing Act do not apply to "sales made by a seller at residential premises pursuant to an invitation issued by the owner or legal occupant of such premises." L. 1985, ch. 94, §3(i). This exemption applies only to sales of merchandise to the owner or occupant of the residential premises where the sale occurs, and a transient merchant who sells to the general public from the yard of a vacant private residence must obtain a transient merchant's license. Cited herein: L. 1985, ch. 94, §§2,3.

* * *

Dear Mr. Fowler:

You request our interpretation of Section 3 of the Transient Merchant Licensing Act (L. 1985, ch. 94). Specifically, you ask whether a transient merchant who sells to the general public from the yard of a vacant private residence is exempt from the licensure requirements imposed by the act.

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.)

Section 3 of the act exempts merchants making certain types of sales from the licensure and regulatory requirements imposed by the act, with subsection (i) exempting "sales made by a seller at residential premises pursuant to an invitation issued by the owner or legal occupant of such premises." The question you have posed requires a determination of whether the last-quoted exemption is restricted to sales to the owner or occupant of the residential premises, or whether it applies to sales of merchandise to the general public.

In determining the scope of the subject exemption, we are guided by the rules of statutory construction recognized in this state. Specifically, the Kansas Supreme Court has summarized some of the applicable rules as follows:

"In determining legislative intent, courts are not limited to a mere consideration of the language used, but look to the historical background of the enactment, the circumstances attending its passage, the purpose to be

accomplished and the effect the statute may have under the various constructions suggested." Arredondo v. Duckwall Stores, Inc. Inc., 227 Kan. 842, Syl. ¶1 (1980).

Additionally, the court has stated as follows:

"When a statute is susceptible to more than one construction, it must be given that construction which, when considered in its entirety, gives expression to its intent and purpose, even though such construction is not within the strict literal interpretation of the statute." State v. V.F.W. Post No. 3722, 215 Kan. 693, 697 (1974).

In determining the purpose of the Transient Merchant Licensing Act, committee minutes indicate that a representative of the Kansas Association of Commerce and Industry, the principal proponent of the law, testified before Senate and House committees that the law was necessary to protect consumers from transient merchants who "misrepresent themselves." Additionally, the Arkansas law from which the Kansas act was adapted states that the intent and purpose of the law is "to protect the public from improper sales techniques by providing for the licensing and regulation of transient merchants." See Ark. Stat. §71-5602.

Considering the above-stated purpose of the law, in our opinion the legislature intended that the exemption prescribed by subsection (i) of Section 3 be restricted to sales of merchandise to the owner or occupant of the residential premises where the sale occurs. The alternative interpretation, i.e. that sales to the general public are permissible under subsection (i), would allow any transient merchant to avoid licensure by simply locating on "residential premises." In our judgment, such an interpretation would defeat the purpose of the act and must be rejected.

In conclusion, it is our opinion that the exemption prescribed by Section 3(i) of L. 1985, ch. 94 applies only to sales of merchandise to the owner or occupant of the residential premises

where the sale occurs, and a transient merchant who sells to the general public from the yard of a vacant private residence must obtain a transient merchant's license.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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RTS:JSS:TRH:jm