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August 29, 1985

ATTORNEY GENERAL OPINION NO. 85- 107

The Honorable John M. Solbach
State Representative, Forty-Fifth District
R.F.D. #1
Lawrence, Kansas 66044

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

Synopsis: The provisions of the Transient Merchant Licensing
Act do not apply to "state or county fairs." L. 1985,
ch. 94, §3(j). This exemption applies to a state or
county fair and to the exhibitors at such a fair.
Cited herein: L. 1985, ch. 94, §§2,3.

* * *

Dear Representative Solbach:

You request our interpretation of Section 3 of the Transient
Merchant Licensing Act (L. 1985, ch. 94). Specifically, you
ask whether "exhibitors" at state and county fairs are exempt
from the licensure requirements imposed by the act. We will
assume that an "exhibitor" is a person who sells merchandise or
services (including food) at a profit.

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 exempts merchants making certain types of sales from the licensure and regulatory requirements imposed by the act, with subsection (j) exempting, inter alia, "state or county fairs." The question you have posed requires a determination of whether the last-quoted exemption is restricted to a state or county fair, or whether it also applies to exhibitors at such a fair.

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., 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 considering the scope of the exemption for state and county fairs, it is significant to note that the legislature exempted fair activities "conducted primarily for amusement or entertainment" from the licensing act. L. 1985, ch. 490, §3(d). Thus, a shooting gallery, ring toss, ferris wheel or other activity conducted for amusement need not obtain a transient merchant's license. Given this fact, it would seem incongruous to require licensure of hot dog vendors and other exhibitors at a fair, and it is our opinion that the legislature did not intend such a result, leaving exhibitors at state and county fairs exempt from the licensure requirements imposed by the Transient Merchant Licensing Act (L. 1985, ch. 94).

Very truly yours,



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RTS:JSS:TRH:jm