ATTORNEY GENERAL OPINION NO. 85-117

The Honorable Wint Winter, Jr.
State Senator, 2nd District
P.O. Box 1200
Lawrence, Kansas 66044

Re: Counties and County Officers--Licenses--Transient Merchant Licensing Act; Exemptions; Fairs Conducted for Amusement or Entertainment

Synopsis: Fairs conducted primarily for amusement or entertainment are exempt from the licensure requirements imposed by the Transient Merchant Licensing Act [L. 1985, ch. 94, §3(d)]. Persons who attend an event which can be termed such a fair for the purpose of displaying and selling art objects and handcrafted items, together with the raw materials used to make such objects and items, are accordingly also exempt from the act. Cited herein: L. 1985, ch. 94, §3.

Dear Senator Winter:

As State Senator for the Second District, which consists of the northern portion of Douglas County, you request our opinion on an exemption which is contained within the Transient Merchant Licensing Act (L. 1985, ch. 94). Specifically, you inquire concerning the treatment to be given to craftsmen or artisans who attend regularly scheduled fairs and crafts festivals, and who produce art objects and handcrafted items for sale there, together with the raw materials used in making such items
(leather, beads, wool, etc.). You inform us that some counties are interpreting the act so as to require such persons to obtain a license and post a bond prior to transacting business; and state that you do not believe that the act was intended to be so applied.

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 transact 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 artisan or craftsperson is a transient merchant if he or she 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 person must obtain a license prior to transacting business in any county in Kansas. 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.

The legislature, in section 3 of the act, has provided a number of exemptions from the licensure requirements. Although contained in 10 subsections, the exemptions are actually much more numerous, given the language of some subsections which contain multiple exemptions. For example, no less than three different exemptions appear for various types of fairs. Subsection (d) exempts "fairs and convention center activities conducted primarily for amusement or entertainment," while subsection (g) includes fairs "sponsored by any church, religious or nonprofit organization" and subsection (j) exempts state or
county fairs. A specific exemption also appears for
craftspersons, for subsection (g) states that the act shall not
apply to "sales of crafts or items by hand and sold or offered
for sale by the person making such crafts or handmade items."

It is our understanding that some have interpreted the language
of subsection (g) to allow craftsperson and artisans to be exempt
only when they are engaged in the sale of their own items, and
not when they sell craft supplies which they have not made
themselves. In our opinion, when reading all of the exemptions
contained in section 3, such a reading of the act is incorrect.
As was noted in Attorney General Opinion No. 85-107 [which
interpreted subsection (j) to exempt state and county fairs], it
would be incongruous to exempt such fairs and yet include vendors
or exhibitors at such fairs within the act. While the
legislature has not included a definition of the term "fair" in
the act, the term is not unusual or one possessing a technical
meaning, and should be construed in its ordinary sense, i.e. a
gathering held at a specified time and place containing displays,
competitions and entertainments. American Heritage Dictionary,
p. 471 (1976). Accordingly, if a craftsperson or artisan
appears at a fair (which need not be the state fair or a county
fair) that is exempt under subsection (d) of Section 3, he or she
should likewise be exempt.

In conclusion, fairs conducted primarily for amusement or
entertainment are exempt from the licensure requirements
imposed by the Transient Merchant Licensing Act [L. 1985, ch.
94, §3(d)]. Persons who attend an event which can be termed such
a fair for the purpose of displaying and selling art objects and
handcrafted items, together with the raw materials used to make
such objects and items, are accordingly also exempt from the act.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:jm