



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

September 12, 1985

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 entertain-  
ment 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.

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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 craftspersons 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 care, or on any real estate, for a period of less than six months in each year.

"(c) 'Transient merchant' means any persons 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 craftsman 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

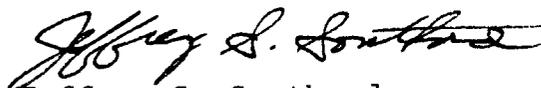
county fairs. A specific exemption also appears for craftspersons, for subsection (g) states that the act shall not apply to "sales of crafts or items by hand and sold or offered for sale by the person making such crafts or handmade items."

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