



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

September 6, 1974

Opinion No. 74- 307

Mr. Dennis D. Roth
City Attorney
Peoples National Bank Building
Burlington, Kansas 66839

Dear Mr. Roth:

K.S.A. 73-207 states in pertinent part as follows:

"That from and after the passage of this act all ex-union soldiers and sailors....[and members of other enumerated groups]....who shall reside within the city or county six months previous to the time of which said license is issued, shall be entitled to a license to operate a delivery and baggage wagon and to vend, hawk and peddle goods, wares, fruits or merchandise not prohibited by law in any county or city in this state....Upon presentation of his certificate and papers....to the clerk of any city or county in this state....and having resided within the city or county from which the license is issued six months previous to the time of issuance.... said clerk shall issue to the said....[person] a license. Such license shall be free, and said clerk shall not collect or demand for the county, city or state any fee therefore."

In your letter, you set out Ordinance no. 4-106 of the City of Burlington, which extends a like exemption to substantially the same classes of persons. We would point out that unlike K.S.A. 73-207, the ordinance does not extend the exemption

"all persons who have served with the armed forces of the United States during the military, naval and air operations in Korea or other places under the flags of the United States and United Nations or under the flag of the United States alone..."

Dennis D. Roth
September 6, 1974
Page two

On the other hand, the ordinance extends the exemption to one group not apparently covered by the statute, i.e., "members of the American Red Cross and Nurse Corps who served overseas during World War II." To the extent that the ordinance provides a more restrictive exemption than that granted by state law, the statute, mus, of course, prevail.

However, concerning the question you raise, these differences are not material. You advise that one Mr. Sloan, of LeRoy, Kansas, has applied for a lecinsé to vend garden vegetables in the City of Burlington, on the business premises of a local merchant. The City of LeRoy is in Coffey County. The city ordinance requires that the applicant for a license be a resident of the city. Mr. Sloan claims a right to a license under K.S.A. 73-207, on the ground that the statute provides for a free city license to any resident of the county in which the city is located.

Mr. Sloan is in error. K.S.A. 73-207 entitles a qualified applicant to obtain a free license from the clerk of either the city or county of which he is a resident. The county has no authority to issue a license entitling the holder to vend within the city, in violation of the ordinances of the city, and K.S.A. 73-207 does not purport to give the county that authority. Similarly, the city has no authority to issue a license entitling the holder thereof to vend outside the city and within the county, in violation of any applicable regulations of the county. K.S.A. 73-207 provides simply that an eligible individual may apply to the city for such a free license. One who is a resident of the county, and obtains a free license under the authority of K.S.A. 73-207, must still obtain any license necessary under any city ordinance. If the individual in question is not a resident of the city from which the license is sought, he is not entitled to a free license under the authority of K.S.A. 73-207.

Very truly yours,


VERN MILLER
Attorney General

VM:JRM:tp