

CITIES TOWNS AND VILLAGES:) The officers of a village may pass
AUTHORITY TO PASS ORDINANCES:) ordinances regulating peddlers.

May 10, 1939



Honorable William Barton
Representative Montgomery County
House of Representatives
Jefferson City, Missouri

Dear Mr. Barton:

This is in reply to yours of recent date wherein you request an opinion from this Department based on the following question:

"May a village with a population of less than 500 and more than 400 regulate peddlers, hawkers, itinerant merchants, and transient vendors of merchandise in the manner as indicated by the enclosed ordinance?"

It is a general rule of law in this State that since cities, towns and villages are creatures of the statutes that the officers of such corporations must look to the statute for their powers and duties.

On the question of whether or not the officers of a village may pass an ordinance regulating peddlers, hawkers, etc., we find that Article 9, Chapter 38, Revised Statutes of Missouri, 1929, sets out certain powers and duties of the officers of towns and villages, and especially Section 7097 of said article and chapter pertains to this question. This section provides in part as follows:

"Such board of trustees shall have power to pass by-laws and ordinances to prevent and remove nuisances;

to prevent, restrain and suppress bawdy houses, gambling houses and other disorderly houses within the limits of such town, or any addition to said town, or any commons thereto attached; to restrain and prohibit gambling; to license, tax and regulate merchants, peddlers and auctioneers, and to regulate and prohibit the sale or giving away of intoxicating liquors under merchants' licenses in such towns: * * * "

The language of this section is so certain that it is unnecessary to construe it in any other manner than it is written. This section in no uncertain terms authorizes the board of trustees of a village to pass such ordinances as they may deem proper to regulate peddlers.

Section 7287, R. S. Mo. 1929, specifically limits the officers of municipal corporations in their powers and duties, and this section is as follows:

"No municipal corporation in this state shall have the power to impose a license tax upon any business avocation, pursuit or calling, unless such business avocation, pursuit or calling is specially named as taxable in the charter of such municipal corporation, or unless such power be conferred by statute."

In the case of *City Of Ozark v. Hammond*, 49 S. W. (2d) 129, 131, the court in referring to this section said:

"This section is applicable to all cities in the state, regardless of whether their charter powers are derived from special charters or from general statutes. *Pierce City v. Hentschel* (Mo. Sup.) 210 S. W. 31; *Siemens v. Shreeve*, 317 Mo. 736, 296 S. W. 415; *Keane v. Strodman*, 323 Mo. 161, 18 S. W. (2d) 896. As heretofore construed,

it operates to limit the powers of municipal corporations to impose occupation taxes; no such corporation can impose a license tax upon any business avocation, pursuit, or calling, unless such business avocation, pursuit, or calling is specially named as taxable in its charter, or in the statute which confers upon it its charter powers. (See cases last cited.)"

From a review of the cases in reference to the powers of city officers to enact ordinances licensing and regulating businesses and callings, it seems that the courts have strictly construed such sections of the statute applicable thereto and unless the statute specifically sets out the business which the city may license and tax, then such city is not authorized to regulate such business or calling.

We note from the ordinance which you have submitted that an attempt is being made to define the person who solicits orders or takes orders for the sale of goods, wares or merchandise for future delivery in the village, as a "peddler," a "hawker," an "itinerent merchant" or a "transient vendor." Whether or not the definition that the city has attempted to make of such avocations is correct would be a matter which would be determinable by the court. However, we will say that if by this ordinance the officials have intended that it apply to orders which may be within the class of inter-state commerce transactions, then it would not be applicable for it would be an interference with commerce and trade and unconstitutional.

The word "peddler" is defined in Words & Phrases, Vol. 1, at page 5262, as follows:

"A peddler is a small retail dealer who carries his merchandise with him, drives from house to house or place to place either on foot or horseback, or in a vehicle drawn by one or more animals, exposing his

May 10, 1939

goods for sale and selling them.
State v. Hoffman, 50 Mo. App. 585,
589."

In the case of City of Carrollton vs. Bazzette, 159 Ill. 284, it was held that an "itinerent merchant" could not be construed as synonymous with a "peddler." So, if that rule is followed in Missouri, since villages are only authorized to license peddlers, then it would not be authorized to license and regulate itinerent merchants or transient vendors or hawkers unless they were performing the acts of a peddler.

Conclusion.

From the foregoing it is the opinion of this Department that a village may pass an ordinance to regulate peddlers, but may not pass ordinances licensing and regulating hawkers, itinerent merchants and transient vendors of merchandise unless such persons are performing acts such as would class them as peddlers.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

TWB:EG

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General