

OPINION
58-203

August 1, 1958 (OPINION)

MUNICIPAL GOVERNMENT

RE: Powers of Municipalities - Ordinances Pertaining to Hawkers
and Peddlers

This opinion is issued to you in response to your request made in behalf of the City Council of Rugby, North Dakota, under the date of July 28, 1958. You ask three questions with reference to Ordinances numbered 49 and 50 of the said city of Rugby.

Your first question was "Does ordinance No. 50 as set forth above apply to such sales persons or solicitation or does it only apply to peddlers and hawkers who may have merchandise with them for delivery immediately rather than taking orders to be filled at a later date from a source outside of the State of North Dakota?" Statutes or ordinances which go beyond the regulation of peddling, and provide that there may be no soliciting for orders or sales by samples, unless the solicitor has secured a license, are inapplicable to the soliciting for orders for goods which are to be shipped from one state into another, since such transactions are directly connected with interstate commerce. See *Cresshaw v. Arkansas*, 227 U.S. 389 (1913).

Your second question was "Are ordinances No. 49 and 50 in your opinion constitutional in the form as set forth above?"

The governing body of a municipality shall have the power:

. . . .

To license, tax, regulate, remove, suppress and prohibit . . .
. hawkers, peddlers . . . and to revoke the license at
pleasure, except that the provision in this subsection . . .
shall not apply to persons selling or offering for sale the
products raised or grown on land within this state; (Emphasis
added)

. . . ."

Section 51-0409 of the 1957 Supplement to the N.D.R.C. of 1943 provides:

Nothing in this chapter shall be construed as prohibiting, or in any way limiting or interfering with the right of any city, village, or other municipal corporation or governmental subdivision of the state, to regulate or license the carrying on within such municipality the business of a transient merchant in any case where authority has been or shall hereafter be, conferred upon it so to do, but the requirements of this chapter shall be in addition thereto. The governing

body of a city or village, by resolution, ordinance, or order, may require transient merchants licensed under this chapter and making or intending to make sales within the city or village limits to comply with any reasonable regulations in addition to this chapter, as that body may deem necessary for their local control and may require the payment by every such merchant of a per diem license fee not exceeding twenty-five dollars. Every such merchant making sales or offering to do so without complying with city or village regulations applicable to transient merchants shall be subject to the penalty provided as if no county license had been issued." (Emphasis added)

It therefore appears that a city has authority from the state to prohibit peddlers and hawkers from doing business, but may only license and regulate itinerant merchants or transient vendors. I am enclosing a former opinion of this office to that effect.

In the case of solicitors taking orders to be shipped in interstate commerce, the case of *Green River v. Fuller Brush Co.* (C.C.A. 10th) 65 F2d. 112 held that an ordinance prohibiting solicitors and itinerant vendors from making uninvited calls at private residences in the pursuit of their occupation does not, as applied to solicitors or orders for goods to be shipped in interstate commerce, operate as an unlawful interference with such commerce.

Your third question is, I believe, answered in the above discussion. I hope this will provide a satisfactory answer to your inquiries.

LESLIE R. BURGUM

Attorney General