

**OPINION
61-38**

February 2, 1961 (OPINION)

CITIES AND VILLAGES

RE: Ordinances - Licensing of Peddlers and Solicitors

This is in reply to your request for an opinion in regard to municipal regulations governing persons soliciting, peddling or selling products and produce from door within the confines of a municipality.

Your questions are stated as follows:

- (1) Can a municipality legally pass an ordinance requiring a license and fee from any person, persons or firm soliciting, peddling or selling products and produce from door to door within the confines of the municipality?
- (2) Can this ordinance legally be drawn so as to require a license and fee from a farmer who is peddling produce, such as eggs, milk and butter, from door to door within the confines of the municipality?"

You further explain that there are several small towns in this area, which, for the purpose of protecting their local grocery markets, would like to pass such an ordinance requiring a sufficient license fee to discourage outsiders from coming into the municipality and peddling milk, eggs, and other dairy produce.

We assume you are familiar with the basic statutory provision - subsection 26 of section 40-05-01 of the North Dakota Century Code which provides:

40-05-01. POWERS OF ALL MUNICIPALITIES. The governing body of a municipality shall have the power:

- (26) REGULATION AND LICENSE OF TRANSIENT BUSINESS AND AMUSEMENTS - EXCEPTION. To license, tax, regulate, remove, suppress, and prohibit fortune tellers, astrologers, and all persons practicing palmistry, clairvoyance, mesmerism, and spiritualism, hawkers, peddlers, pawnbrokers, theatricals and other exhibitions, shows and amusements, ticket scalpers and employment agencies, and to revoke the license at pleasure, except that the provision in this subsection with reference to hawkers and peddlers shall not apply to persons selling or offering for sale the products raised or grown on land within this state;"

Generally we believe that your first question must be answered in the affirmative on the basis of the above statute. However, in view of the exception therein in reference to persons selling or offering for the sale the products raised or grown in this state it seems doubtful that such an ordinance could be enforced with reference to produce mentioned i.e., protecting local grocery markets by discouraging outsiders from coming into the municipality and peddling milk, eggs, and other dairy products. (Note also in this regard the dissertation in regard to sale of such farm products by the farmer growing same in *State v. Fleming*, 140 N.W. 674, 24 N.D. 593, at page 600 of the North Dakota Reports).

One other point should be considered however, and that is the power of the municipality to license and require inspection of dairy products under the general police power to protect the public health. We are enclosing a copy of a letter written January 23, 1961, to Mr. George Regan, Flaxton, North Dakota on this point, which we believe will be helpful and informative. To take advantage of this type of licensing, it must be borne in mind that the purpose of the licensing ordinances must actually be for the public health and not merely a device instituted to exclude competition.

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