

April 25, 2002

MEMORANDUM

TO: Angela Banks, City Clerk

FROM: Don Darden, Management Consultant

SUBJECT: Peddlers, ETC.

It is very difficult to read the law and have clear in your mind exactly what is meant. I am going to try, in this memorandum, to discuss these terms in layman's language.

1. A business is any activity by a person with the object of gain or benefit. The benefit or gain is generally recognized as a profit. A city government does not fall within the definition of a business. An example of a business is a pawn shop operating with the expectation of making a profit from the sale of merchandise, a house inspection service for the purpose of making a profit, or a health food store that buys vitamins for \$5 a bottle and hopes to sell them for \$10 per bottle. Any person in the City of Smithville who is engaged in such activity is required by State laws (the State Business Tax Act) to purchase a business license from the city, unless he meets the requirements for an exemption.
2. Now, we will discuss exemptions. If a person comes into Smithville and sets up in a place (vacant lot, parking lot, or building) on a temporary basis, he is a transient vendor. The key words are "place" and "temporary." He is not required to purchase a regular business license but may buy instead a transient vendor's license for \$50 that covers a 14-day period. The holder of a transient vendors license is not required to pay the gross receipts tax in addition to the \$50 license fee. If he is there for three months, he might choose to buy a regular license and then pay a gross receipts tax. If he is there for six months, he is not temporary. If the person does not sell \$3,000 worth of merchandise, he is not covered by the Business Tax Act. An example would be a person from North Carolina who comes into Smithville with a truckload of furniture and sets up in a private parking lot to sell furniture. He buys a transient vendor's license and does not pay a gross receipts tax.
3. A peddler is not a transient vendor, but he is engaged in business. A peddler does not set up at one place to sell merchandise. He moves down the street from place to place, house to house, or street to street. He would be charged for a regular business license, if he sells \$3,000 worth of merchandise plus your peddler's permit fee. It is possible for him to be exempt from the business license and still have to buy a peddler's permit.
4. A solicitor is one who goes from place to place, street to street, just like the peddler, except that he is taking orders for the sale of merchandise for future delivery. If he leases or uses a building, automobile, trailer, structure, tent, hotel room, lodging house, apartment, or shop or other place in the city to show samples and take orders, he is a solicitor. Unless he can prove an exemption, he has to buy a business license plus a city permit as a solicitor.
5. Charitable Solicitors. This section of the Smithville Municipal Code gets a little fuzzy, because it does not define a "charitable organization." This ought to be

amended to define a charitable organization. Our model ordinance defines a charitable organization as:

- (1) A person or agent with a current exemption certificate from the IRS under 501(c)(3)
 - (2) Is a member of United Way, Community Chest or a similar “umbrella” organization for charitable or religious organization organized and operating in Dekalb County.
 - (3) Has been in continuous existence as a religious organization or a charitable organization in Dekalb County for 2 years prior to the application for a permit.
6. Street barker. A street barker is one who is a peddler but who engages in business during recognized festival or parade days in the city and limits his business to selling or offering novelty items and similar goods in the area of the festival or parade. Your code does not refer to a street barker, but it does refer to a “hawker”, “huckster”, or “street vendor”, without defining the terms. I would eliminate these terms and use “street barker” instead. If a street barker sells \$3,000 in merchandise and is not otherwise exempt, he has to buy a business license and a peddler’s permit