

**Opinion No. [29-39]**

August 10, 1929

**BY:** J. A. MILLER, Assistant Attorney General

**TO:** Mr. W. B. Walton, District Attorney, Silver City, New Mexico.

ITINERANT VENDORS -- Established merchants not liable for license and tax. § 74-102, Code 1929.

**OPINION**

I have yours of the 6th instant in which you request an opinion as to the liability for the tax and bond provided for in Section 3006 of the Codification of 1915, and upon a statement of facts as follows:

"The L. B. Price Mercantile Co. of St. Louis, which is qualified to do business in the State of New Mexico, maintains in Silver City, and has for ten years or more past, a stock of household merchandise, kept in a store room in the residence occupied by the manager or salesman. From this place the goods are carried in two automobiles to different places in Grant, Luna and Hidalgo counties, and, as a general rule the goods are sold directly from the cars. Two persons are employed, both of whom are local residents. County and city licenses are had and county and city taxes paid on merchandise stock."

Section 3006 of the Codification to which you refer, applies only to Itinerant Vendors, and Itinerant Vendors required to pay the tax and deposit the sum of \$ 1,000 in cash, are those defined in Section 3005, which is follows:

"The words 'Itinerant Vendors' as used in this chapter, shall include all persons engaged in a temporary or transient business and who for the purpose of carrying on such business, hire, lease, or occupy any room, building, or storeroom for the storage, exhibition, or sale, or a place from which to deliver the goods, wares, and merchandise, or any part thereof dealt by them, also all persons who go from place to place, or house to house, soliciting, or taking orders for goods, wares, and merchandise for future delivery; but shall not include commercial travelers or selling agents selling goods to dealers and shall not include or apply to the sale of books, papers, school supplies, fuel or household machinery."

I think the answer to your question hinges on the construction we give to the words "temporary or transient business," since only persons engaged in temporary or transient business and who for the purpose of carrying on such business do the other things enumerated are Itinerant Vendors. Words in a statute are usually to be understood in their ordinary sense. The word "temporary", as defined in the International Dictionary,

means "lasting for a time only; existing or continuing for a limited time; not permanent; as, the patient has attained temporary relief."

The word "transient" as defined in the same dictionary means:

1. "passing before the sight or perception, or, as it were, moving over or across a space or scene viewed, and then disappearing; hence, of short duration; not permanent; not lasting or durable; not stationary; passing; fleeting; brief; --"
2. "hasty; momentary; imperfect; brief; --"
3. "staying for a short time; not regular or permanent; --"

"A citizen of New York, who came to Texas and had been engaged in business there for fourteen months, next preceding the filing of a suit, and had been continuously there except for three trips to visit his family in New York, where he also maintained a residence, was not a 'transient person,' but a resident of the state, entitled to be sued in the county of his residence." *Taylor v. Wilson*, 93 S. W. 108.

"Permanent merchants are those who have a permanent place of business, and 'transient merchants' are transitory or temporary traders, who have no intention of locating permanently." *State ex rel. Mudeking v. Parr*, 123 N. W. 408.

For other definitions see *Words and Phrases*, 1st, 2nd, and 3rd editions.

From the definitions quoted, I am of the opinion that "temporary" and "transient" as used in our statutes are synonymous and have reference to time only. From your statement of facts, it appears that the Mercantile Co. to which reference is made, has been for more than ten years and still is engaged in business in Silver City, operating from an established place and, as I take it, expecting to continue business as heretofore. I do not believe that under this statement of facts such company could be held to be engaged in a temporary or transient business and, therefore, not liable for the tax and deposit required by Section 3006 of the Codification.