

Opinion No. 41-3922

October 16, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*107} In your letter of the 15th, you, in substance, request our opinion as to whether or not a peddler who sells merchandise, such as candy, nuts, bakery goods, auto accessories, etc., to retailers would have to procure a peddler's license.

We have on our statute books two enactments governing itinerant vendors. They are Chapter 107 of the Laws of 1905, (Sections 74-101 to 74-106, inclusive, New Mexico Statutes, Annotated, 1929 Compilation) and Chapter 128 of the Laws of 1905, (Sections 74-201 to 74-222, inclusive, New Mexico Statutes, Annotated, 1929 Compilation).

These two statutes attempt to cover generally the subject matter, and were passed at the same session of the Territorial Legislative Assembly, and they are in many respects in conflict. This being true, our Supreme Court in the case of State vs. Marcus, 34 N.M. 378, 281 P. 454, there {*108} held that insofar as there is any conflict between the two statutes. that Chapter 107, Laws of 1905, was repealed by Chapter 128, Laws of 1905.

Section 74-202, New Mexico Statutes, Annotated, 1929 Compilation, (the same being a portion of Chapter 128, Laws of 1905) reads in part as follows, to-wit:

"The provision of this article shall not apply to commercial travelers or agents selling to merchants in the usual course of business * *".

In view of the foregoing review, I conclude that such peddlers as aforesaid are not subject to license fees imposed on itinerant vendors. In arriving at this conclusion, I have, of course, assumed that the peddlers mentioned in your letter have been pursuing their trade in the ordinary and usual course of business.

This office has heretofore ruled that a coffee salesman was not subject to the license fee, and I enclose herewith a copy of Opinion No. 290.

Trusting that the foregoing sufficiently answers your inquiry, I am,