

**Opinion No. 42-4038**

March 5, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. David W. Carmody District Attorney Santa Fe, New Mexico. Attention: Mr. M. P. Gutierrez.

{\*167} This will acknowledge receipt of your letter of March 3, 1942 wherein you requested an opinion as to whether or not an employee of a general merchandise store, located in one of the counties in your district, who, in making deliveries for said store, solicits and obtains further orders, would be termed an itinerant vendor within the meaning of Section 74-201, New Mexico Statutes, Annotated, 1929 Compilation.

Section 74-201, New Mexico Statutes, Annotated, 1929 Compilation, {\*168} provides as follows:

"That the term 'Itinerant vendor,' for the purpose of this article shall mean and include any person, either principal or agent, who engages in either a temporary or transient business in this state, either in one locality or in traveling about the country, or from place to place, selling manufactured goods, jewelry, wares or merchandise, and it shall include peddlers and hawkers, and also those who for the purpose of carrying on their temporary or transient business, hire, lease or occupy a building, structure, tent, car, vehicle, store room or place of any kind, for the exhibition and sale of any manufactured goods, jewelry, wares or merchandise."

The business described in your letter is neither a temporary nor a transient business. In view of the foregoing, therefore, it is my opinion that the practice of the representative above referred to would not classify him as an itinerant vendor.

Bq GEO. H. HUNKER, Jr.

Asst. Atty. General