



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

July 23, 2021

Ginger M. Miller, Esq.  
Attorney for City of Senatobia  
Post Office Box 50  
Senatobia, Mississippi 38668

Re: Mobile Food Vendors

Dear Ms. Miller:

The Office of the Attorney General has received your request for an official opinion.

#### **Issues Presented**

1. Does the sale of beef, poultry, and seafood products sourced from within the State of Mississippi fall within the exception contemplated in Miss. Code Ann. Section 75-85-3?
2. Is the vendor allowed to sell any other products and can the city oversee those sales?

#### **Response**

1. Yes, the sale of beef, poultry, and seafood products sourced from within the State of Mississippi fall within the exception contemplated in Section 75-85-3.
2. A transient vendor may only sell products without obtaining a transient vendor license if one of the exceptions in Section 75-85-3 applies.

#### **Applicable Law and Discussion**

As an initial matter, we note that you asked several questions which are outside the scope of an official opinion. Pursuant to Mississippi Code Annotated Section 7-5-25, opinions of this office are issued on prospective questions of State law. We do not interpret regulations promulgated by state or federal agencies. Thus, any questions that you may have regarding health or tax regulations should be addressed by the appropriate agency, such as the Department of Health, the Department of Agriculture, the Department of Marine Resources, or the Department of Revenue. Further, this office does not opine on questions that are overly broad, make factual determinations or opine on questions of liability. Accordingly, this opinion is limited to the questions listed above.

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According to Section 75-85-5: “A transient vendor may not transact business in any county or municipality in this state unless the vendor, and the owner of the merchandise or provider of the services to be offered if the merchandise is not owned or the services are not provided by the vendor, has secured a license in accordance with this chapter and otherwise complied with this chapter.” On this topic, our office has previously opined:

Whether the subject business warrants the procurement of a privilege license or a transient vendor license is a determination to be made by the granting authority. If the municipal tax collector determines that the subject business is conducting business for less than six months, the business owner should obtain a transient vendor license, provided that the business does not qualify for one of the exemptions enumerated in Mississippi Code Annotated Section 75-85-3.

MS AG Op., *Mullings* at \*1 (Apr. 22, 2011). Section 75-85-3(1) provides several exceptions to the Transient Vendor Law including “[s]ales of agricultural, dairy, poultry, seafood or forest management products or services related to forest management or silvicultural activities, nursery products, foliage plants or ornamental trees, except such products or services sold at retail and not grown or produced within Mississippi.” Miss. Code Ann. Section 75-85-3(1)(i).

Given that poultry and seafood are specifically listed as exemptions to the Transient Vendor Law, we understand your first question to ultimately be whether beef would be considered an “agricultural product” under the exemption provided in Section 75-85-3(1)(i). The term “agricultural product” is not defined in the Transient Vendor Law. However, as you state in your request, Section 69-1-373 defines “agricultural products” to include “any agricultural commodity or product, whether raw or processed, including *any commodity or product derived from livestock* that is marketed for human or livestock consumption or products that are used for agricultural purposes such as fertilizers and soil and plant amendments.” The term “agricultural products” is also defined to include beef elsewhere in the Mississippi Code. *See, e.g.*, Miss. Code Ann. §§ 79-17-39 (defining “agricultural products” to include “the products of . . . live stock”), 69-1-353 (including “meat” within the definition of “locally grown or locally raised agricultural products”). Based on the aforementioned definitions of “agricultural products,” this office is of the opinion that the term encompasses beef for purposes of the exemption to the Transient Vendor Law provided at Section 75-85-3(1)(i).

With respect to your second question, a transient vendor may only sell products without obtaining a transient vendor license if one of the exceptions in Section 75-85-3 applies. We note that, consistent with our previous opinions, it remains the opinion of this office that prepared foods are “not exempt from the requirement of a transient vendor license by Section 75-85-3(i), regardless of whether the final products are prepared with dairy, seafood or agricultural products grown in Mississippi.” MS AG Op., *Joseph*, (Apr. 26, 2005).

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If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Beebe Garrard*

Beebe Garrard

Special Assistant Attorney General

OFFICIAL OPINION