



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 22, 2022

The Honorable Shelton Shannon
Mayor, Town of Plantersville
Post Office Box 507
Plantersville, Mississippi 38862

Re: Transient Vendor Licensing

Dear Mayor Shannon:

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

Background

According to your request, a local fireworks vendor has been doing business in Plantersville since 2000. Originally, the business operated out of a mobile tent, and the owner paid an annual transient vendor privilege tax of \$250. It has recently come to the attention of the owner that his previous business manager continued to pay the transient vendor tax even after the business moved to a permanent location. The owner moved the business to a permanent mobile home fifteen years ago and would like the business' classification changed from that of transient vendor to a general business vendor.

Questions Presented

1. Does the Plantersville Board of Aldermen (the "Board") have the authority to change the status of a previously classified transient vendor to a general business vendor at the vendor's request, and if so, what are the procedures?
2. Is the company still considered a transient vendor even though the building is stationary and conducts business twice a year?

Brief Response

1. No. The Board does not have the authority to change the classification of a business from transient vendor to general business vendor. The municipal tax collector has the authority to determine the proper classification of a business and the type of license it requires.

2. Yes. A company in the business of selling fireworks may only operate from the fifteenth day of June to the fifth day of July and the fifth day of December to the second day of January each year and therefore falls into the category of a transient business, which by definition operates for less than six months of each year.

Applicable Law and Discussion

The municipal tax collector has the authority to determine the proper classification of municipal businesses and shall issue the required license. Miss. Code Ann. §§ 27-17-451 and 27-17-453. The tax collector, as the granting authority, determines the classification and type of license a particular business requires after reviewing the information contained in the license application. MS AG Op., *Mullings* at *1 (Apr. 22, 2011). The Board does not have the authority to reclassify a transient vendor. This office has previously opined that “[a] transient vendor, by definition, carries on business at a location for a period of less than six months. Whether a particular business warrants the procurement of a privilege license or a transient vendor license is a determination to be made by the granting authority [tax collector].” *Mullings* at *1 (citing MS AG Op., *Sanderson* (May 18, 2007)).

A transient vendor is defined as “any person who transacts *transient business* in this state either in one locality or by traveling from place to place in this state. The term includes a vendor who for the purposes of carrying on such business hires, leases, uses or occupies any building, structure, motor vehicle, railroad car or real property.” Miss. Code Ann. § 75-85-1(a) (emphasis added). Transient business is then defined in the same statute as “any business conducted for the sale of merchandise or services that is carried on at a particular location for a period of less than six (6) months in each year, even though the owner of such business may conduct the business at another location for more than six (6) months in each year.” *Id.* at (b). Therefore, even if a business is sited at one particular location, if it is in operation for less than six months, it is considered a transient business, and the owner is a transient vendor.

The sale of fireworks is governed by Section 45-13-9, which states, in part, that “[n]o fireworks shall be sold or offered for sale at retail before the fifteenth day of June and after the fifth day of July and before the fifth day of December and after the second day of January of each year.” Section 45-13-9 restricts the sale of fireworks to a total of fifty (50) days a year. Therefore, any entity solely selling fireworks is limited to conducting such business for less than six months each year by Mississippi law.

According to Section 75-85-1, any business that operates in a particular location for less than six months out of the year is, by definition, a transient vendor. However, whether the specific fireworks business in your request is a transient vendor is a determination that must be made by the municipal tax collector.

Hon. Shelton Shannon

August 22, 2022

Page 3

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/ Misty Monroe*

Misty Monroe
Assistant Attorney General

OFFICIAL OPINION