

Original

Supervisor's Order Book 12, Pages 397 & 398

February 2, 1981

PUBLIC HEARING
PEDDLERS LICENSE ORDINANCE

A Public Hearing on a proposed Peddlers License Ordinance for Russell County was held. Notice of the Public Hearing having been advertised in local newspaper for two successive weeks to be held at the Courthouse in Lebanon, Virginia, on Monday, February 2, 1981, at 10:00 A. M.

Upon motion by Danny L. Brown and duly passed by the Board of Supervisors that the following ordinance be adopted with the following changes in the proposed ordinance as presented:

1. Section 1-3...when he peddles otherwise than on foot the fee shall be two hundred dollars (\$200.00)...
2. EFFECTIVE DATE--March 1, 1981

Voting on the motion was as follows:

AYE: J. L. Porter and Danny Brown

ABSTAINED: Harold Mitchell stating that he felt there was a conflict of interest.

ORDINANCE

An ordinance imposing and levying a Peddlers License Tax beginning March 1, 1981.

BE IT ORDAINED by the Board of Supervisors of Russell County, Virginia:

SECTION 1-1. Definitions.

The definition of a peddler is as provided in the Code of Virginia, *§8.1-3717* Section 58-340. Exempted from the provisions of this ordinance are: (1) A distributor or vendor of motor vehicle fuel and petroleum products, or seafood, (2) A farmer, (3) A farmers cooperative association, (4) A producer of agricultural products, (5) A person conducting a garage or yard sale, and (6) A

manufacturer taxable on capital by the State who peddles the goods, wares, or merchandise manufactured by him at a plant the capital of which is taxable by the State, and who peddles no other goods, wares, or merchandise. Evidence of exemption from this ordinance shall be required as provided in the Code of Virginia, Section 58-351.

SECTION 1-2. Amount of tax for peddlers of products of a perishable nature.

The tax on peddlers of meat, milk, butter, eggs, poultry, vegetables, fruits or other family supplies of a perishable nature not grown or produced by them shall be \$50.00 dollars for each vehicle used in such peddling, and the tax on peddlers of family supplies of a perishable nature not grown or produced by them and groceries generally including such articles as are customarily sold in grocery stores shall be \$50.00 dollars for each vehicle used in such peddling.

SECTION 1-3. Amount of tax for peddlers generally.

Except as provided in Section 1-2, the license tax for peddling or bartering throughout Russell County for each person so engaged or employed when he travels on foot shall be \$100.00 dollars and when he peddles otherwise than on foot the fee shall be \$200.00 dollars except that: A tax on peddlers of wood or coal not produced by them for resale shall be \$50.00 dollars for each vehicle used in such peddling.

SECTION 1-4. Licenses.

Every person who is a peddler and has paid the tax as provided in the preceding sections shall be issued a license.

SECTION 1-5. Issuance of licenses and collection of taxes.

The County Treasurer shall collect the license taxes provided herein, and issue the licenses provided for in Section 1-4.

SECTION 1-6. Restrictions and transferability.

A peddler may peddle, sell, or barter only those goods of the kind for which the license was issued. A peddler's license shall not be transferable and shall not be subject to proration. Every license issued under this ordinance shall expire on December 31 of each year. The full amount of the license tax shall be paid when assessed.

SECTION 1-7. Penalties.

Any peddler who shall peddle, sell, or barter without a license, or who shall peddle, sell, or barter goods of a kind other than those for which the license was issued, shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than FIFTY (\$50.00) DOLLARS nor more than FIVE HUNDRED (\$500.00) DOLLARS for each offense.

SECTION 1-8. Severability.

The provisions of this Ordinance are hereby declared to be severable. If any clause, sentence, section, or part of this Ordinance shall for any reason be adjudged to invalid, such invalidity shall not effect the parts which are not adjudged to be invalid.

C. Any tax imposed pursuant to § 58.1-3703 on peddlers and itinerant merchants shall not exceed \$500 per year. Dealers in precious metals shall be taxed at rates provided in § 58.1-3706.

D. This section shall not apply to a peddler at wholesale or to those who sell or offer for sale in person or by their employees ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies of a perishable nature or farm products grown or produced by them and not purchased by them for sale. A dairyman who uses upon the streets of any city one or more vehicles may sell and deliver from his vehicles, milk, butter, cream and eggs in such city without procuring a peddler's license.

E. The local governing body imposing such tax may by ordinance designate the streets or other public places on or in which all licensed peddlers or itinerant merchants may sell or offer for sale their goods, wares or merchandise. (Code 1950, §§ 58-266.8, 58-340; 1982, c. 633; 1983, c. 550; 1984, c. 675.)

Editor's note. — The cases below were decided under prior law.

History of section. — The general provisions of this section, defining peddlers, fixing a state license tax and a penalty for violations, and exempting farmers and producers of the enumerated articles from the imposition of the tax, are not new. The general features are found in §§ 50 and 51 of the Tax Bill of 1903. *City of Petersburg v. General Baking Co.*, 170 Va. 303, 196 S.E. 597 (1938).

The right to assess peddlers with a license tax is perfectly plain, so long as it is done in good faith. It rests both in the power to

tax and in the police power. *H.L. Carpel of Richmond, Inc. v. City of Richmond*, 162 Va. 833, 175 S.E. 316 (1934).

The exemption of farmers under this section must be reasonably construed. It was never intended that the mere fact that one was a farmer carried with it all the privileges of a peddler. The agricultural products which he may sell must be those which he has produced. *H.L. Carpel of Richmond, Inc. v. City of Richmond*, 162 Va. 833, 175 S.E. 316 (1934).

Applied in *Thompson's Dairy, Inc. v. Commonwealth*, 198 Va. 411, 94 S.E.2d 243 (1956).

§ 58.1-3718. Counties, cities and towns authorized to levy a license tax on peddlers at wholesale. — A. For purposes of the license tax authorized in § 58.1-3703, any person, firm or corporation, who or which sells or offers to sell goods, wares or merchandise to licensed dealers, other than at a definite place of business operated by the seller, and at the time of such sale or exposure for sale delivers, or offers to deliver, the goods, wares or merchandise to the buyer shall be deemed a peddler at wholesale. For purposes of this section any delivery made on the day of sale shall be construed as a delivery at the time of sale.

B. The license tax imposed by any locality on a peddler at wholesale shall not be at a rate greater than the rate imposed by such locality on a wholesale merchant selling similar goods, wares or merchandise in such locality at one definite place of business. (Code 1950, § 58-354; 1950, p. 894; 1984, c. 675.)

Editor's note. — The cases below were decided under prior law.

This section is not applicable to one selling to consumers, but only to one selling to licensed dealers or retailers. *Caffee v. City of Portsmouth*, 203 Va. 928, 128 S.E.2d 421 (1962).

Nor is it applicable to business which sells at a regular place of business. — Neither the tax nor an exemption contained in this section is applicable to a business which sells at a regular place of business. A basic element of sale by peddling is that the sale be made at other than a regular place of business.

Caffee v. City of Portsmouth, 203 Va. 928, 128 S.E.2d 421 (1962).

Ordinance taxing nonresident dairy held not discriminatory. — The contention that a tax ordinance discriminated against a nonresident dairy, because resident dairies were not assessed with the tax, was without merit, since the basis of the classification made by the ordinance was not whether the dairy was a resident or a nonresident, but whether, under the state laws applicable, it was or was not taxable on capital employed in business in Virginia. *Thompson's Dairy, Inc. v. County Bd.*, 197 Va. 623, 90 S.E.2d 810 (1956).

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