

***Is it unconstitutional for a municipality to require vendors, peddlers, and door-to-door salespeople to purchase a vendor's license?***

Several towns have had recent challenges to their ordinances, which require vendors to be licensed. These challenges involved the Commerce Clause of the U.S. Constitution and the Free Speech provision of the First Amendment.

Municipalities have broad authority under their police powers to adopt ordinances that protect the health, safety and welfare of the public. So long as an ordinance protects those interests, is nondiscriminatory and operates in the least restrictive manner, that ordinance will be upheld in court. For example, an ordinance which requires all itinerant sellers to obtain an ID card/license and which restricts door-to-door selling to daylight hours would probably pass muster as a safety measure. But one which requires ID cards/licenses only for out-of-staters or people of certain ethnic groups and which banned the sale of religious materials would certainly violate both the Commerce Clause and Free Speech.

Ordinances may regulate activity on the streets, in public places and door-to-door because safety issues are important in all three of those places. Vendors who interfere with traffic or with a person's ability to feel safe in his or her home may be a real or perceived threat and may be regulated.

An ordinance must not interfere with interstate commerce. Therefore, an ordinance that does not discriminate against people or products from other states will probably survive a court challenge. There should be a uniform license and cost of a license or permit for peddlers. However, it has been held that a municipality may impose a higher license fee for peddlers who do not have a fixed place of business, so long as the increased price is not unreasonable and is not a penalty to protect local merchants.

Finally, Vermont municipalities have statutory authority to regulate itinerant, transient or temporary salespeople under 24 V.S.A. § 2291(9). Ordinances which are reasonably drafted to protect the interests of the town and its residents and which do not interfere with commercial free speech and do not interfere with interstate commerce will most likely be upheld by a court.

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