

1981 WL 158019 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 20, 1981

\*1 The Honorable James R. Metts  
Sheriff of Lexington County  
Post Office Box 639  
Lexington, South Carolina 29072

Dear Sheriff Metts:

Attorney General McLeod has referred your letter of October 6, 1981, to me for reply. Your first question concerns the operation of flea markets and garage sales on Sunday, if the items sold are expressly prohibited by Section 53-1-60. It is important to keep in mind that [Section 53-1-40 of the South Carolina Code](#) of Laws sets forth three separate offenses:

- (1) Engaging in worldly work, labor or business of one's ordinary calling on Sunday;
- (2) Selling or offering to sell publicly or privately or by telephone, at retail or wholesale to the consumer any goods, wares or merchandise on Sunday;
- (3) Employing of others to engage in work, labor, business or selling or offering to sell any goods, wares or merchandise on Sunday.

It is important to keep in mind that only those activities enumerated in [Section 53-1-50 of South Carolina Code](#) of Laws are excepted from the general prohibition on Sunday work, and that many other activities not listed in Section 53-1-60 are prohibited. This is because Section 53-1-60 is not an all inclusive list, and provides: 'No inference shall arise from the foregoing enumeration that either the sale or the offering for sale on Sundays of items or articles not mentioned is permitted.' Thus, if the operation of a flea market or garage sale falls into any of the above three categories, it is the opinion of this Office that they would be violative of the Sunday Blue Laws, unless the sales are specifically excepted in [Section 53-1-50](#).

Your second question concerns who should be charged for the violation of the 'Blue Laws' at a flea market. It is the opinion of this Office that any individual who is violating the Blue Laws can properly be charged. Thus, either the operator of the flea market, or any of the individuals renting booths or spaces at the flea market could properly be charged if they are violating a provision of the South Carolina Code.

Your third question concerns whether Section 40-41-10, regulating peddlers and hawkers, would be applicable to flea markets or garage sales. This is unlikely, based upon the definition of 'hawkers and peddlers' found in State v. Belcher 1 McM 40 (SC, 1840): 'Persons who travel from town to town . . . carrying to sell or exposing to sell, any . . . goods, wares or merchandises.' Further, 39A CJS Hawkers and Peddlers, Section 3, provides this further definition: 'He should have no fixed place of dealing but travel around from place to place, or from house to house; and that he should carry his wares with him, and offer them for sale, and not merely carry and show samples of them.'

Thus, it appears to be the transient nature of the individual which determines whether or not he is a hawker or a peddler, and it would not appear that in most flea markets and garage sales this definition would apply. However, given a particular case, this provision of the Code might be applicable and the individual would need a license.

\*2 I am enclosing copies of the August 23, 1971, and May 23, 1975, Opinions you requested. If I can be of any further assistance to you, please do not hesitate to give me a call.

With best personal regards, I am,  
Yours very truly,

John M. Barton  
Assistant Attorney General

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