

1975 S.C. Op. Atty. Gen. 113 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4040, 1975 WL 22337

Office of the Attorney General

State of South Carolina

Opinion No. 4040

June 24, 1975

***1 (1) A municipality has the authority to require a license of persons engaged in the occupation or business of plumbing, painting and carpentry.**

(2) A person continually and regularly engaged in the business of selling guns from his home from a catalog can be required to have a business license under an appropriate municipal business licensing ordinance.

Clerk

Town of Leesville

The provisions of the South Carolina Constitution, namely the two sections referred to above, provide that the General Assembly shall vest cities and towns with authority to levy taxes for corporate purposes. Section 47–271 of the Code, relating to towns with more than 1,000 inhabitants, states that cities and towns ‘may *annually* require by ordinance the payment of such reasonable sum of money as a license by any person *engaged or intending to engage* in any calling, business, occupation, or profession.’ This section further provides that ‘Any such license shall be graduated according to the gross income of the person required to pay it or upon the amount of capital invested in the business.’

The word ‘engage’ is defined in *Black's Law Dictionary*. It means ‘To employ or involve one's self; to take part in; to embark on. It imparts more than a single act or transaction or an occasional participation.’

Numerous cases are found in Volume 14A of *Words and Phrases* defining the word ‘engage’ and ‘engaged’, and generally it requires continuous action at least to some degree. In the case of *State v. Roberson*, 136 N. C. 587, 48 S. E. 595, it was stated that for one to be ‘engaged’ in an occupation signifies much more than the doing of one act in the line of such occupation.

It has been said that the words ‘occupation’ and ‘business’ are synonymous of ‘activity’. *Novak v. Redwine*, 89 Ga. App. 755, 81 S. E. 2d 222. ‘Business’ is synonymous with ‘calling’, ‘occupation’ or ‘trade’. *Gray v. Board of County Commissioners of Sedgewick County*, 191 Kan. 195, 165 P. 867, LRA 1918F, 182. ‘Occupation’ has reference to the principal or regular business of a man's life, or that to which he devotes his time and attention, such as trade, profession or other vocation or calling, or that which principally takes up one's time, thought and energy; especially one's regular business or employment, or whatever one follows as a means of making a livelihood; *Trails Motors, Inc. v. First National Bank of Laramie*, 76 Wyo. 152, 301 P. 2d 775. See Volume 29, *Words and Phrases, Occupation-Vocation*, and Volume 6, *Words and Phrases, Calling*. Anyone engaged in contracting these is therefore subject to business licensing requirements. The words ‘calling, business, occupation or profession’ have as a matter of custom and practice in this State included the business or occupation of plumbing, painting and carpentry and other related trades and occupations. The manner of arriving at the contract price, as for example an hourly charge, will not change or excuse this requirement.

***2** In response to the second question stated, an ordinance under Section 47–271, Code of Laws, requiring a municipal business license of a person engaged in a business or occupation is sufficient to reach the business of selling and delivering guns from a person's home if this is done on a regular, continuous and persistent basis. *International Shoe Co. v. Washington*, 326 U. S. 310, 66 S. Ct. 154. The manner and extent of activity of the business, however, must actually be considered in resolving whether or not the person is in fact ‘doing business.’

It is our conclusion therefore, that a municipality has the authority to require a license of persons engaged in the occupation or business of plumbing, painting and carpentry.

Further, a person continually and regularly engaged in the business of selling guns from his home from a catalog can be required to have a business license under an appropriate municipal business licensing ordinance.

G. Lewis Argoe, Jr.
Assistant Attorney General

1975 S.C. Op. Atty. Gen. 113 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4040, 1975 WL 22337

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.