

Opinion No. 2009-069

June 1, 2009

The Honorable Karen S. Hopper
State Representative
Post Office Box 864
Mountain Home, Arkansas 7654-0864

Dear Representative Hopper:

I am writing in response to your request for an opinion on two questions arising from A.C.A. §§ 14-140-101 to 14-140-210 (Repl. 1998). Paraphrasing your questions, you ask:

1. May a political subdivision—such as a city, county, or other public entity—charge vendors a fee to participate in a farmers’ market that is held on public property?
2. May a political subdivision—such as a city, county, or other public entity—exclude vendors residing in contiguous counties from participating in the farmers’ market?

RESPONSE

With respect to your first question, my response is “no.” The General Assembly has twice specifically prohibited charging farmers who participate in the farmers’ market: “No charge or assessment of any kind shall be made or levied in any manner against any farmer or producer of vegetables or provisions in bringing them to any market in any city, for standing in or occupying a place, with or without horses and wagon used in bringing the produce to the market, in any of the market spaces of the city, or in the streets contiguous thereto, on market days and evenings previous thereto.” A.C.A. § 14-140-101(a)(2) (Repl. 1998). To reiterate the illegality of assessing fees to farmers who participate in farmers markets, the General Assembly stated: “It shall be unlawful ... to impose a tax ... in any

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manner whatsoever [on] any person in the selling or the offering for sale of any fruits, vegetables, or any products of the farm, including meats from domestic animals or livestock.” A.C.A. § 14-140-102(a) (Repl. 1998).

With respect to your second question, my response is “no.” The General Assembly has specifically prohibited the local governmental authority from excluding vendors from the market. Subsection 14-140-102(a) states: “It shall be unlawful ... to hinder, or to interfere ... or *to obstruct in any manner whatsoever any person* in the selling or the offering for sale of any fruits, vegetables, or any products of the farm, including meats from domestic animals or livestock.” (Emphasis added.) The General Assembly has, however, made an exception to this general rule for situations in which a vendor interferes with the orderliness, health, or safety of the market. A.C.A. § 14-140-101(a)(1) (Repl. 1998). Therefore, the local governmental authority may not exclude vendors from contiguous counties unless the vendor interferes with the orderliness, health, or safety of the market.

Assistant Attorney General Ryan Owsley prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM:RO/cyh