

Governor

May 25, 1983

Honorable Harry Hughes
Governor of Maryland
State House
Annapolis, Maryland 21401

Re: Senate Bill 327

Dear Governor Hughes:

This is to advise you that we have reviewed for constitutionality and legal sufficiency Senate Bill 327, a bill which provides a criminal penalty for out-of-county, including out-of-state, truck vendors in Garrett County who fail to purchase an itinerant peddlers license, as required by existing law. Although there is no constitutional objection to the penalty, as such, we regard the existing licensing law as unconstitutional. Because the bill adds a criminal penalty to what we think is an unconstitutional law, and apparently seeks to render more enforceable the existing provisions of law, we are unable to approve the bill.

Senate Bill 327 amends Section 3-6 of the Public Local Laws of Garrett County, which generally prohibits a truck vendor "from some other county or state" from selling goods without having purchased from the Clerk of the Circuit Court an annual itinerant peddler's license for \$250. Although this local law clearly exempts resident truck vendors, such vendors, as well as non-resident vendors, are subject to the general licensing requirement for hawkers and peddlers. Article 56, Secs. 21 and 23-28. The license fee is regarded as a revenue measure, Brown v. State, 177 Md. 321, 328 (1939), and in Garrett County this fee, which is collected by the Clerk of the Circuit Court, is \$300 for non-residents and \$100 for residents. Although non-resident truck vendors are technically subject to a double licensing requirement, it can reasonably be said that both non-residents and residents are treated alike in that both must be licensed. However, they are not treated alike in the license fees they must pay, i.e., \$550 for the non-resident and \$100 for the resident.

It has long been recognized that the Commerce Clause, Article 1, Sec. 8, Cl. 3, of the Federal Constitution does not immunize interstate commerce from its fair share of the costs of State government. Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450, 461-462 (1959). However, a State may not tax the privilege of engaging in interstate commerce nor discriminate against interstate commerce by providing a direct commercial advantage to local business or by subjecting interstate commerce to the burdens of multiple taxations. Id. at 548. Although the "drummer cases" have long held that the