

**Note from the Attorney General's Office:**

1987 Op. Att'y Gen. No. 87-036 was overruled in part by  
1987 Op. Att'y Gen. No. 87-072.

**OPINION NO. 87-036****Syllabus:**

1. Pursuant to R.C. 311.37(D), the bond filed by a transient vendor with the county sheriff must be transmitted to the Attorney General within ten working days after the transient vendor ceases to do business in the county.
2. Pursuant to R.C. 311.37(B), the bond filed by a transient vendor must remain in effect for two years after the transient vendor last does business in this state.
3. Where, pursuant to R.C. 311.37(B)-(C), a transient vendor has filed a bond in a given county, the transient vendor is not required to file an additional bond upon return to that county so long as the previous bond is still in effect, the previous bond has not been exhausted by claims against it, and the wholesale value of the goods and services to be provided does not exceed the amount provided for by the previous bond.
4. Where, pursuant to R.C. 311.37(C)-(D), a transient vendor has filed a bond in a county of this state, the transient vendor is not required to file an additional bond in each county in which he subsequently intends to do business so long as the previous bond is still in effect, the previous bond has not been exhausted by claims against it, and the wholesale value of the goods and services to be provided does not exceed the amount provided for by the previous bond.
5. Pursuant to R.C. 311.37(B), the transient vendor bond must be in a form approved by the Attorney General.
6. Pursuant to R.C. 311.37(E) and R.C. 5739.17(B),

any person making retail sales at a "fair" or "festival" who holds a valid transient vendor's license is exempt from the registration and bond requirements of R.C. 311.37.

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**To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, June 4, 1987**

I have before me your request for my opinion regarding several aspects of the application of Ohio's recently enacted transient vendor law. Specifically you ask:

1. If there is a festival within Geauga County in April, 1987 and a transient vendor furnishes a bond to the Geauga County Sheriff, does that sheriff have to send that bond to you within ten days after that festival is over?
2. If the answer to question number 1 is "yes", then if that transient vendor comes back in September to another fair in Geauga County does that transient vendor have to post another bond?
3. How does a sheriff know what type of bond to ask for?
4. If the transient vendor has posted a bond in Lake County for \$10,000.00, does that transient vendor also have to post a bond in Geauga County when he comes into Geauga County for a festival or fair?

As you note in your letter of request, the General Assembly recently enacted Am. Sub. S.B. 247 (eff. July 9, 1986), providing for the registration and bonding of transient vendors. See R.C. 311.37(A) and R.C. 5739.17 (defining the term "transient vendor").<sup>1</sup> R.C. 311.37(A) requires that each transient vendor file a registration form and surety bond which is equal in value to one half of the goods or services which he intends to provide. The amount of the bond need not exceed ten

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<sup>1</sup> R.C. 311.37(A) adopts the definition of the term "transient vendor" as provided for by R.C. 5739.17. Pursuant to R.C. 5739.17, a transient vendor is defined as:

[A]ny person who, in the usual course of his business, transports inventory, stock of goods, or similar tangible personal property to a temporary place of business in a county in which he has no fixed place of business, for the purpose of making retail sales of such property. A "temporary place of business" means any public or quasi-public place including, but not limited to, a hotel, rooming house, storeroom, building, part of a building, tent, vacant lot, railroad car, or motor vehicle that is temporarily occupied for the purpose of making retail sales of goods to the public. A place of business is not temporary if the same person conducted business at the place continuously for more than six months or occupied the premises as his permanent residence for more than six months.

thousand dollars. The bond must be filed with the county sheriff at least ten days before the transient vendor intends to commence business.

Your first question concerns the time at which the county sheriff must transmit the transient vendor bond to the Attorney General. R.C. 311.37(D) expressly provides that "[t]he bond filed by any transient vendor pursuant to this section shall be given to the attorney general by the county sheriff within ten working days after a transient vendor ceases to do business in that county." It is an axiom of statutory interpretation that plain and unambiguous statutory language leaves no occasion to resort to other rules of statutory construction. See State ex rel. Stanton v. Zangerle, 117 Ohio St. 436, 159 N.E. 823 (1927); McCormick v. Alexander, 2 Ohio 66 (1825). Thus, the plain language of the statute clearly commands that the bond be transmitted to the Attorney General within ten working days after the transient vendor ceases to do business within the county.

Your second question concerns whether a transient vendor who has previously filed a bond in a given county must furnish an additional bond at a later date if he intends to return to that county to do business. While R.C. 311.37 is silent as to this issue, R.C. 311.37(B) does provide that "[t]he bond shall remain in effect for two years after the transient vendor last does business in this state." (Emphasis added.) Thus, by providing that the bond remains effective for two years after the transient vendor ceases to do business anywhere within the state, it is evident that the legislature intended that as a general rule, a transient vendor need not refile a bond with the county sheriff each time he re-enters a county to conduct business.<sup>2</sup> This conclusion recognizes that as a practical matter, the cost of refileing a bond with the county sheriff each time the transient vendor re-enters a county to do business, would be prohibitive. However, where the current value of the goods and services exceeds the previously bonded amount, the transient vendor may still be required to file a new bond for the difference between the amount of the previous bond and the amount which would be required if the vendor were filing a new bond. Similarly, where the previous bond has

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<sup>2</sup> R.C. 311.37(B) specifically provides that the bond remains in effect for two years from the date at which the transient vendor ceases to do business anywhere in the state. Thus, the effective period of the bond is in no way related to the date at which the transient vendor filed the bond, or to the date at which the transient vendor ceased to do business within the county.

Although I have concluded that a transient vendor need not refile a bond under the enumerated circumstances, the same does not hold true for the registration requirements of R.C. 311.37. R.C. 311.37(A)(4) specifically provides that a transient vendor must file certain information with the county sheriff before commencing business within the county. Among the information that must be provided is "the times and days during which...the transient vendor plans to do business within that county." Thus, it is apparent that the legislature contemplated the registration of this information each time the transient vendor enters a county to do business.

expired or been expended to satisfy claims against it, the transient vendor may be required to file a new bond with the county sheriff at least ten days before commencing business in the county.

Your fourth question concerns a similar issue: whether a transient vendor who furnished a bond in one county must file another bond in each county in which he intends to commence doing business. While again R.C. 311.37 does not expressly provide for the resolution of this issue, R.C. 311.37(D) does provide that:

The bond filed by any transient vendor pursuant to this section...shall be in favor of the state for the benefit of any person who suffers loss or damage as a result of the purchase of goods from the transient vendor or as the result of the negligent or intentionally tortious acts of the transient vendor in the conduct of business in this state. The bond may be used to compensate any state or local agency for damages caused by the transient vendor, for costs incurred by the agency for the illegal acts of the transient vendor, or for the failure to pay any amount owed by the transient vendor to the state or local agency. The bond may also be used to compensate the state for any sales tax not paid by the transient vendor. Except for the amount of unpaid sales tax to be deducted from the bond, if any, the attorney general shall pay any portion of the bond to any person or agency in accordance with the order of a court without making an independent finding as to the amount of the bond that is payable to that person or agency.

Pursuant to this section, indemnification from the bond is not limited to persons who reside within the county. Instead, the statute provides that the amount may be used to compensate "any person who suffers loss or damage...as a result of the negligent or intentionally tortious acts of the transient vendor in the conduct of business in this state." (Emphasis added.) Further, R.C. 311.37(B) specifically provides that the bond "shall be in favor of the state." It is evident, therefore, that the General Assembly intended for the bond to be subject to state-wide claims against the transient vendor. While an interpretation of this statute requiring that a transient vendor file a bond in each county in which he intends to do business would increase the amount of the fund available for indemnification of losses stemming from the vendor's activities, as noted above, the cost of refileing a bond with the county sheriff in each county in which the transient vendor intends to do business would be prohibitive. Therefore, I must conclude that the legislature did not intend that a transient vendor should be required to file a new bond in each county in which he intends to commence doing business so long as he has previously furnished a bond in a county of this state. Again, however, where the value of the goods or services which the transient vendor intends to provide exceeds the previously bonded amount, or where the previous bond has expired or been expended to satisfy claims against it, the transient vendor is required pursuant to R.C. 311.37(B) to file a new bond with the sheriff of the county in which he intends to commence business.

Your third question asks: "How does the county sheriff know what type of bond to ask for?" R.C. 311.37(B) provides that

"[t]he bond shall be in a form approved by the attorney general." I have made available upon request a model registration and bond form .

Finally, it must be noted that the foregoing analysis may not be exhaustive of the issues which are relevant to the determination of whether R.C. 311.37 is applicable to the context which you describe. In your correspondence you specifically note that the vendors with whom you are primarily concerned are those vendors whose sales are conducted at "fairs" and "festivals" within Geauga County. R.C. 311.37(E) makes special provisions for transient vendors making retail sales at these events. The statute expressly provides that:

This section does not apply to any of the following:

(1) A limited vendor, as defined in section 5739.17 of the Revised Code, or a transient vendor making retail sales at a temporary exhibition, show, fair, world trade center, flea market, or similar event, as permitted by section 5739.17 of the Revised Code. (Emphasis added.)

R.C. 5739.17(B) essentially mirrors this exception, providing in pertinent part:

Any holder of a valid transient vendor's license may make retail sales as a limited vendor at a temporary exhibition, show, fair, flea market, or similar event, held anywhere in the state without obtaining a limited vendor's license and without complying with any provision of section 311.37 of the Revised Code. (Emphasis added.)

Pursuant to these sections, licensed transient vendors who make sales at a "fair" are specifically exempted from the requirements of R.C. 311.37. Furthermore, although neither of these sections expressly exempts transient vendors who make sales at "festivals" from the provisions of R.C. 311.37, a festival would appear to be a "similar event" to those specifically identified in these sections, and therefore would warrant like treatment.

Accordingly, it is my opinion and you are hereby advised that:

1. Pursuant to R.C. 311.37(D), the bond filed by a transient vendor with the county sheriff must be transmitted to the Attorney General within ten working days after the transient vendor ceases to do business in the county.
2. Pursuant to R.C. 311.37(B), the bond filed by a transient vendor must remain in effect for two years after the transient vendor last does business in this state.
3. Where, pursuant to R.C. 311.37(B)-(C), a transient vendor has filed a bond in a given county, the transient vendor is not required to file an additional bond upon return to that county so long as the previous bond is still in effect, the previous bond has not been exhausted by claims against it, and the wholesale value of

the goods and services to be provided does not exceed the amount provided for by the previous bond.

4. Where, pursuant to R.C. 311.37(C)-(D), a transient vendor has filed a bond in a county of this state, the transient vendor is not required to file an additional bond in each county in which he subsequently intends to do business so long as the previous bond is still in effect, the previous bond has not been exhausted by claims against it, and the wholesale value of the goods and services to be provided does not exceed the amount provided for by the previous bond.
5. Pursuant to R.C. 311.37(B), the transient vendor bond must be in a form approved by the Attorney General.
6. Pursuant to R.C. 311.37(E) and R.C. 5739.17(B), any person making retail sales at a "fair" or "festival" who holds a valid transient vendor's license is exempt from the registration and bond requirements of R.C. 311.37.