

OPINION NO. 66-180**Syllabus:**

Municipalities may require a license for auctions held in public places and may establish regulations which pertain to the business of auctioneering within their jurisdictions so long as such regulations are not in conflict with the general licensing law as incorporated in Chapter 4707, Revised Code.

A county may not require another license nor regulate auction-

earing except insofar as it has an obligation to enforce the provisions of Chapter 4707, Revised Code.

To: J. Gordon Peltier, Director, Department of Commerce, Columbus, Ohio
By: William B. Saxbe, Attorney General, December 20, 1966

Your request for my opinion reads as follows:

"The Auctioneer section of our Division of Licensing has requested that we secure an opinion from you as to the legality of county or municipal governmental agencies charging auctioneers for a license or fee to conduct sales within their respective jurisdictions, when by law an auctioneer is required to secure a license from the state of Ohio.

"Prior to October 10, 1963, Section 4707.03, Ohio Revised Code, designated the court of common pleas, or a judge thereof in vacation, as the licensing authority for auctioneers. A revision of the auctioneer licensing law, effective October 10, 1963, designated the Department of Commerce as the licensing agency for all auctioneers in the state of Ohio. (Section 4707.02, Ohio Revised Code.)

"Your opinion is requested as to whether, in view of the above changes of the law, it is legal or a valid exercise of police power, for counties or municipalities to require auctioneers to secure a license to conduct business within the limits of the counties or municipalities."

As you state, Chapter 4707, Revised Code, as revised in 1963, designates the Department of Commerce as the licensing agency for all auctioneers who wish to operate in the State of Ohio. It establishes a State Auctioneers Commission within the Department of Commerce, sets out qualifications for license, exceptions from licensing, and grounds for either suspension or revocation of such license or a criminal penalty.

The power of the state to regulate and to license public auction sales and auctioneers is derived from the police power which is, of course, sovereign with the state, and the legislature is empowered to pass general laws for this purpose. It would at first appear that with the formulation of the revised Chapter 4707, Revised Code, the legislature has preempted the power of a municipality to legislate in this area. This assumption, however, would be misleading.

Municipalities and counties have such police powers as have been delegated to them. Section 3, Article XVIII, Ohio Constitution, provides:

"Municipalities shall have authority to exercise all powers of local self-government

and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." (Emphasis added)

In addition under General Powers relating to municipal corporations we find Section 715.24, Revised Code, entitled "Auctioneering" which reads as follows:

"Any municipal corporation may:

"(A) Regulate auctioneering;

"(B) Regulate, license, or prohibit the sale at auction of goods, wares, and merchandise or of live domestic animals at public places within such municipal corporation;

"(C) Regulate, license, or prohibit the selling of goods, merchandise, or medicine on the streets."

Therefore, municipalities have been given specific authority to regulate the business of auctioneering, so long as such regulation is not in conflict with the general laws of the state. A municipality may not prescribe the qualifications for licensing of auctioneers inasmuch as the state has already established standards, but they may license auctioneering in public places or on the streets and may regulate the business in general.

In instances where the power to regulate, license, or prohibit a business has been granted to a municipality it may impose a fee which is not unreasonable or discriminatory. This fee need not be confined to the exact expense of issuing the license but may include the reasonable probable cost of supervision, regulation, and inspection which may be requisite as to the business for which the license is required. Of course any license issued at the local level may not pertain to the qualifications of an auctioneer but only to regulation of the business of auctioneering as authorized by the statute.

Section 715.63, Revised Code, also refers to municipal licensing of auctioneers of horses and other animals, when such auctions are held on public grounds and authorizes the charge of a reasonable fee for such license.

It also appears to be well settled that a municipal corporation may be authorized by the legislature to exercise its licensing power for police purposes within a reasonable distance outside of its municipal limits.

You also inquire as to the power of a county to license or police auctioneers. A county, being a subdivision of the state, organized for judicial and political purposes, is generally not considered a separate political entity with any inherent attributes of sovereignty. The police powers, being sovereign powers, are therefore not inherent with county government and a county possesses only powers expressly granted to it. The only exception to this general conclusion would be when a charter government has been formed wherein the charter expressly provides that the county may

exercise some of the powers otherwise vested in municipal government. In fact, then, the counties enforce the state police power but have no authority to legislate their own. I find no statutory or constitutional authority for a county to license or regulate the business of auctioneering or auctioneers except insofar as it has a duty to enforce the provisions of Chapter 4707, Revised Code.

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

Municipalities may require a license for auctions held in public places and may establish regulations which pertain to the business of auctioneering within their jurisdictions so long as such regulations are not in conflict with the general licensing law as incorporated in Chapter 4707, Revised Code.

A county may not require another license nor regulate auctioneering except insofar as it has an obligation to enforce the provisions of Chapter 4707, Revised Code.