The Alabama Municipal
JOURNAL
December 2009 Volume 67, Number 6

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The Alabama Municipal JOURNAL

Official Publication, Alabama League of Municipalities

December 2009 • Volume 67, Number 6

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The Alabama Municipal Journal is published monthly by the Alabama League of Municipalities, 535 Adams Avenue, Montgomery, Alabama 36104, telephone (334) 262-2566. Website: www.alalm.org. Single copies, $2.00. By subscription, $24.00 per year. Advertising rates and circulation statement available at www.alalm.org or by calling the above number. Statements or expressions of opinions appearing within this publication are those of the authors and not necessarily those of the Alabama League of Municipalities. Publication of any advertisement should not be considered an endorsement of the product or service involved. Material from this publication may not be reprinted without permission.

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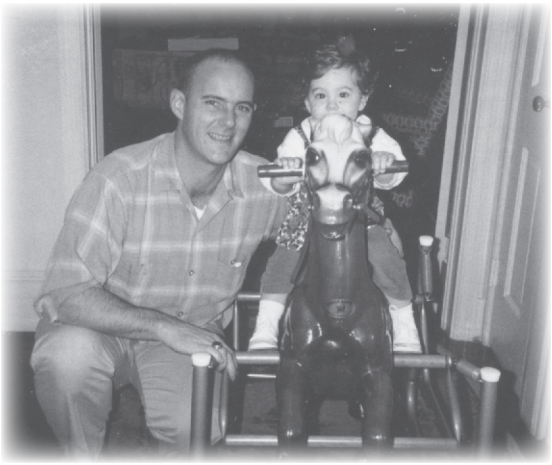
A Message from the Editor

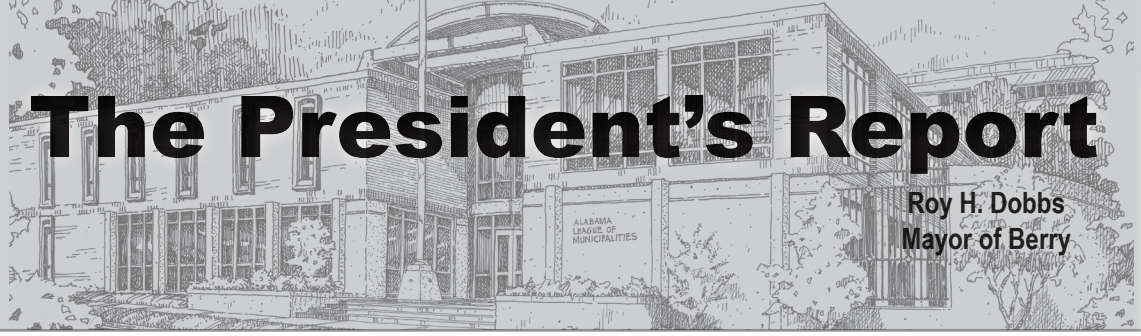
What's your earliest Christmas memory? Mine? Well, I'm not sure, but I *can* tell you that my all-time *favorite* Christmas present as a child was, without doubt, when Santa left me Barney. No, not an obnoxious, singing purple dinosaur, thank goodness. Barney was a slick brown plastic pony suspended on springs with a red plastic bridle and bright red handles below his ears. He arrived Christmas Day 1969, when I was 13.5 months old. Just approaching toddler status, I was so little, I had to be lifted to the saddle. My toes barely reached the stirrups (er, foot rests). Apparently, however, I was fearless and as soon as I figured out the bouncy, rocking concept, Mom said she worried I would fling myself off. I spent HOURS on that horse. By the time I turned two, I was mounting up by myself – with the aid of a small stool. As soon as I was remotely conversational I named my special plastic pony Barney because, according to Mom, I adored Deputy Barney Fife from "The Andy Griffith Show." I'm sure she was right; Deputy Fife is still my favorite Mayberry character.

Barney was magic. I would put a blanket on his neck, lay my head on the blanket and rock myself to sleep. If Mom was in a different room, she knew to come get me when the squeaking slowed or she might be scooping a little one from the floor (although I don't remember ever falling off my horse!). When I was older, I replaced the blanket with a pillow. Several times I fell asleep with gum in my mouth ... which ended up in my hair. *Ahhhhh* – good times!



Eventually I wound up with a little brother and as we muddled through childhood, Barney came right along with us. We'd strategically position him at the foot of my brother's bed, rig up some reins and play wagon train. Barney never complained. Over time his shiny coat wore to a dull luster and his slick saddle cracked across the middle. Undeterred, I added padding. Barney was my faithful steed until my feet dragged the floor and the springs threatened to snap. Even then, he remained in my room until I went to college. From there he was retired into storage – neither my parents nor I had the heart to completely cast him aside. A few years ago, when Mom and Dad decided they had no choice but to clean out a lifetime of accumulated, well-loved items, Barney found a new home. A lady with two young grandchildren adopted him – split saddle and all. Don't you just love happy endings?! **Merry Christmas!**

Carrie



The President's Report

Roy H. Dobbs
Mayor of Berry

Alabama Officials Active with NLC

Last month I had the honor of attending the National League of Cities (NLC) Congress of Cities in San Antonio, TX. Alabama generally has an impressive number of elected officials attend this conference which is always packed with useful, interesting workshops. We are also very fortunate to have members who are active in NLC's governing process.

NLC's Board of Directors is made up of the president, first vice president, second vice president, all past presidents still in government service and 40 other members. Twenty members of the Board of Directors are elected each year during the Annual Business Meeting to serve two-year terms. In addition, the president, first vice president and second vice president are elected to one-year terms during the Annual Business Meeting.

Councilmember Debbie Quinn of Fairhope completed her two-year term on the NLC board and Mayor Jim Byard of Prattville began his second year during the Business Meeting on Saturday, November 14.

Our League is also fortunate to have two members serving on the NLC Advisory Council: Mayor Ted Jennings of Brewton and Mayor Leon Smith of Oxford. The Advisory Council is composed of municipal officials who have served a term on the NLC Board of Directors and who continue to serve in elected office. The local elected officials who make up the Advisory Council play an instrumental role in guiding NLC's efforts and meet at least twice a year to discuss and chart new progress regarding NLC's agenda.

In addition to the elected leadership and the Advisory Council, NLC relies on standing committees to develop municipal policy and explore issues which are critical to our nation's cities and towns. A number of Alabama officials have been active on various NLC committees and I encourage each of you to consider serving on one of NLC's policy and advocacy committees if you have an interest. The deadline for serving on a committee in 2010 has passed; however, mark your calendars to turn in an application next November for placement in 2011. An elected official must be from an NLC member city to hold a leadership position (chair or vice chair) or to serve on a committee, council or panel:

Policy and Advocacy Committees
- Community & Economic Development
- Energy, Environment & Natural Resources
- Finance, Administration & Intergovernmental Relations
- Human Development
- Information Technology & Communications
- Public Safety & Crime Prevention
- Transportation Infrastructure & Services

Member Networking Councils
- Central Cities Council
- First-Tier Suburbs Council
- Small Cities Council
- University Communities Council

CityFutures Panels
- Community & Regional Development Panel
- Democratic Governance Panel
- Equity & Opportunity Panel
- Public Finance Panel

Other NLC Advisory Groups
- Corporate Partners Leadership Council
- Council on Youth, Education and Families
- International Council
- Leadership Training Council

For more information on this process, visit NLC's website at **www.nlc.org**. ▪

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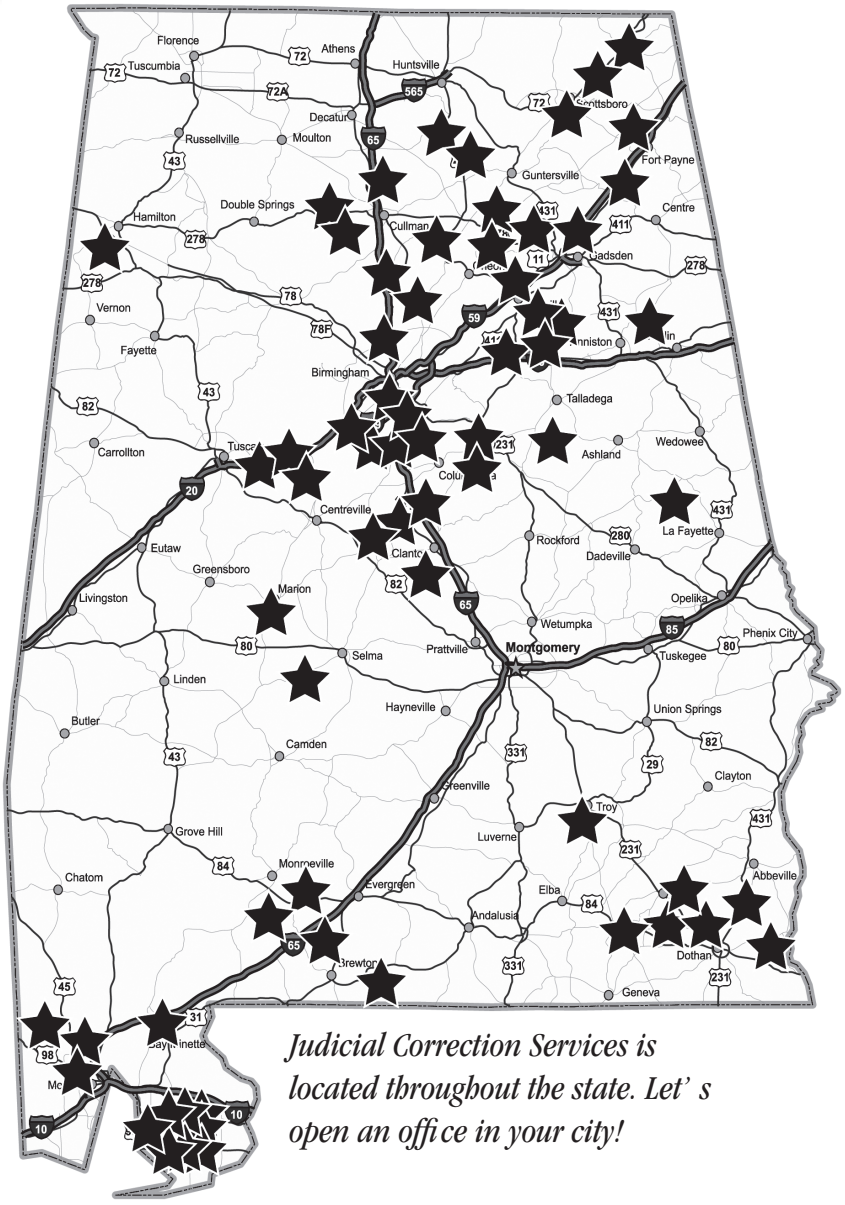

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Municipal Overview

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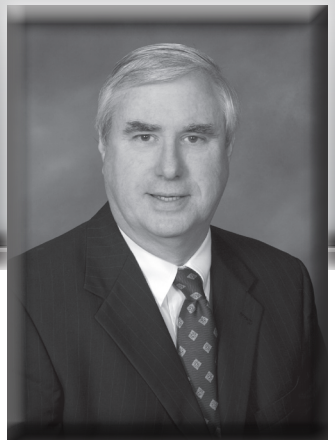
Executive Director



2010 League Legislative Package

The Alabama League of Municipalities Committee on State and Federal Legislation met at League Headquarters on Thursday, November 5, 2009. The committee, which is composed of elected municipal officials from throughout the state, considered a multitude of legislative recommendations from the League's five policy committees, member municipalities, and the League staff and adopted an ambitious League Legislative Package for 2010. Due to the economic downturn and shortfalls in both State budgets, we can expect a very tough session; therefore, it is critical that all municipal officials get behind this package and push for its passage during the session. Please make a special effort to contact legislators while they are home before the Regular Session begins on January 12, 2010.

The Committee on State and Federal Legislation unanimously approved the following package of bills (in no particular order of priority) to be introduced during the 2010 Regular Session.

Consolidation of Municipal Court Offenses
Title 11-45-9 provides that the maximum fine for violation of a municipal ordinance shall be $500. Title 13A-5-12.1 provides that the maximum penalty in municipal court for violation of 13 enumerated offenses shall be $1,000. The League will seek an amendment to Section 11-45-9, Code of Alabama 1975, to list the offenses in Title 13A in Section 11-45-9 so that all penalties for violation of municipal ordinance can be located in the same statute. The bill will not change the amount of any fines authorized by law.

Corrections Fund
Section 11-47-7.1, Code of Alabama 1975, authorizes municipalities to levy additional court costs and establish a corrections fund for the operation of municipal jails and court complexes. Legislation will be sought to provide that 60% of the money in the corrections fund must be expended for municipal court purposes and that the remaining 40% of the money in the corrections fund may be spent for municipal court systems, jails, or law enforcement purposes. The bill will also allow for the payment of debt service in relation to allowed expenditures.

Attendance of Municipal Officials at Council Meetings
Some cities and towns have been affected by certain elected officials who have refused to attend council or commission meetings. Such absences can cause quorum problems which result in a municipality not being able to function on a daily basis. The League will seek legislation to provide that any municipal elected official who misses all council or commission meetings for three consecutive months shall be removed from office by operation of law. This bill would except military service or those whose absences are excused by a majority the council or commission for extenuating circumstances.

Competitive Bid Law
Municipalities may purchase items from the state bid list without further bidding. The League will seek legislation to authorize a similar procedure for items for which there is a federal Government Services Administration (GSA) contract.

Island Annexation
Some municipalities have authority to annex by ordinance all or any portion of any unincorporated or territories, which are enclosed within the corporate limits of the municipality and have been so enclosed for a period of one (1) year or more. The League will seek an amendment to this law to give all other municipalities similar authority.

Engineer Approval of Subdivisions
The League will seek legislation to amend Section 11-52-30(b), Code of Alabama 1975, relating to subdivision regulations to allow any municipality with a city engineer, whether employed full-time or by contract, to approve subdivision regulations in lieu of a county engineer.

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Contact: Lisa Miller

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It's Not Just Training, It's Preparedness

By: Shannon Arledge

When the Center for Domestic Preparedness, located in Anniston, Ala., was founded in 1998, it was envisioned as a resident training facility that would train a maximum of 10,000 responders per year. In FY 2009, the CDP staff trained close to 99,000 responders from across the United States and its territories, well exceeding the initial expectations of the late '90s. Recently, the CDP celebrated its 500,000th graduate, another milestone as the center moves into its 12th year.

A unique feature of CDP training is that the majority of the resident and non- resident training courses are interdisciplinary, promoting greater understanding among diverse responder disciplines: Emergency Management, Emergency Medical Services, Fire Service, Governmental Administrative, Hazardous Materials, Healthcare, Law Enforcement, Public Health, Public Safety Communications, and Public Works.

Nestled in the foothills of the Appalachian Mountains, the CDP's training program features more than 40 unique courses that offer emergency responders everything from radiation contamination and incident response training to pandemic influenza and healthcare emergency management.

A popular aspect of the CDP is the fact that it is home to the nation's only toxic chemical training facility for emergency responders. The faculty and students refer to the training site as the "COBRATF", which stands for Chemical, Ordnance, Biological, and Radiological Training Facility. The COBRATF features civilian training exercises in a true toxic environment, using chemical agents.

"The COBRA exceeded my expectations," said Lt. Stephen Weiler, a police officer from Illinois. "I feel very comfortable now attempting to provide quality response to a mass casualty incident. I really enjoyed how we tested two separate nerve agents. The COBRA facility has boosted my confidence to respond, now that I know my gear will work and keep me safe."

Although practical application with toxic agents is a highlight of some courses, classroom instruction offers expert advice from instructors and students alike who have served on the frontlines day after day in hometown America. The CDP uses the latest techniques and procedures and some of the best equipment available during the instruction.

Instructors at the CDP each have a minimum of 10 years of required emergency responder experience before they are even considered for a position. Each instructor is carefully selected, based on experience, knowledge of the national response elements, and ability to teach.

In 2007, the CDP welcomed the Noble Training Facility into its training venue. The former Army Noble Hospital was converted into a training site for health and medical education in disasters and mass casualty events. It serves as the only operational hospital in the U.S. dedicated to training.

"You can never fully focus on the exercise at home," said Dr. Mary-Elise Manuell, emergency medicine director from Worcester, Mass. "[At the CDP] you operate inside an actual hospital, which is so amazing,"

continued next page

she stressed. "When you come down here [to Alabama] and experience these fully-functional exercises and realize the broad impact they have, you want to go back and ensure your facility is ready for just about any type of incident."

The cost to attend CDP training courses is minimal for qualified responders, as the Department of Homeland Security picks up the tab for travel, meals, and lodging. The devotion of time and attention is only asked in return.

"The CDP offers one-of-a-kind training you can't find anywhere else," said Rick Dickson, assistant director of Training Delivery. "This facility is an asset to the nation, and the best part is, the training is funded, for state, local and tribal response personnel."

The CDP provides America's emergency responders with skills for response to potential terrorism, making America a safer place. Preparing a nation capable of protecting itself and responding to critical emergencies are among the many accomplishments realized each week at the Alabama training center.

The CDP is a vital artery for the Federal Emergency Management Agency's National Preparedness Directorate's national readiness in the Department of Homeland Security. Learn more about the CDP at **http://cdp.dhs.gov**. ■

FEMA's mission is to support its citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.

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2010 League Legislative Package *continued from page 7*

Federal Food Stamps
The League will seek legislation similar to that enacted in other states to authorize the Alabama Department of Human Services to opt out of the Federal law which restricts persons convicted of felony drug charges from being eligible to receive food stamps if the individual meets all other eligibility requirements for aid or benefits.

Weed Abatement Amendments
Property with overgrown weeds is not only unsightly, but causes a number of public health problems. Many municipalities have found it difficult to use existing weed abatement statutes effectively. The League will seek legislation to amend the weed abatement statute by shortening the length of public notice required and to make the requirements pertaining to posted notices more reasonable.

Publication of Municipal Ordinances
State law requires municipalities to publish ordinances of general and permanent operation. In some instances, the costs of publication can be extremely large even though only a few minor changes are made to the ordinance. In an effort to protect both the public's right to know and the public's money, the League will propose permissive legislation to authorize an alternate method of publishing license, zoning and planning ordinances by means of a synopsis published in the newspaper.

Appropriation for Wastewater Treatment SRF and the Alabama Drinking Water Finance Authority
Many years ago, the Alabama Legislature established a State Revolving Loan Fund for Wastewater Treatment (SRF) and the Alabama Drinking Water Finance Authority. The purpose of these programs was to take state funds and match them with federal dollars to create a loan fund to offer low interest loans to governmental entities for wastewater treatment and drinking water projects. Each year, the League seeks additional matching funds from the legislature to continue these nationally recognized programs.

Election Law Amendments
Most Alabama cities and towns conducted municipal elections in 2008. During the elections process, it became apparent that certain amendments to the election laws were needed. The League will seek legislation to make these needed amendments to the municipal election laws. ■

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Deputy Director/ General Counsel

Control of Solicitors and Peddlers

In 1933, in the case of *Green River v. Fuller Brush Co.,* 65 F.2d 112 (1933), the U. S. Court of Appeals for the Tenth Circuit upheld the validity of the following ordinance:

"The practice of going in and upon private residences in the City [Town] of _____ by solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise not having been requested or invited to do so by the owner or owners, occupant or occupants of said private residence for the purpose of soliciting orders for the sale of goods, wares, and merchandise and/or disposing of and/or peddling or hawking the same is declared to be a nuisance and punishable as such nuisance as a misdemeanor."

The court held that the municipalities in Wyoming had the power to determine what activities constitute nuisances and to punish perpetrators.

Following this decision, many municipalities around the country, including here in Alabama, adopted Green River type ordinances to regulate solicitors within the municipal limits. Many of these ordinances tended to draw a distinction between commercial and noncommercial speech, though, based on court rulings that noncommercial solicitation generally involved the promotion of religious or political ideas and was therefore protected by the First Amendment to the U.S. Constitution. In some cases, all noncommercial solicitation was allowed, while commercial speech was prohibited.

Commercial speech carried with it the baggage of merely promoting a business objective as opposed to attempting to advance a political or religious purpose. Courts which analyzed commercial speech regulations generally refused to extend First Amendment protection. *See*, *e.g*., *Breard v. Alexandria*, 341 U.S. 622 (1951). Thus, municipalities enjoyed greater latitude when regulating purely commercial speech, including regulations placed on commercial solicitors.

In recent years, views on the First Amendment and commercial speech have changed, however. *See, e.g., Cincinnati v. Discovery Network Inc.*, 507 U.S. 410 (1993). For example, in *Central Hudson Gas & Electric v. Public Services Commission of New York*, 447 U.S. 557 (1980), the U.S. Supreme Court held that commercial speech is protected by the First Amendment if it concerns lawful activities and is not misleading. To regulate commercial speech, a government must assert a substantial governmental interest in the regulation and show that its regulation materially advances that interest. Some courts have gone even further and held that a municipality must use the least restrictive means of achieving the governmental objective.

But does this mean that solicitation cannot be regulated by a municipality? Transient solicitors often travel in groups under the guidance of a glib leader who is armed with a legal-looking document which says that they are not subject to local regulation. Often these documents quote Supreme Court cases in such a manner as to mislead and confuse the reader. In some cases, local officials are led to believe that they will be subject to civil liability for enforcing any ordinance designed to regulate such activity.

Attempts by solicitors to challenge the right of municipalities to regulate solicitation are misguided, however. All types of solicitation, whether commercial, religious or political, are subject to reasonable regulation by municipalities. *Larsen v. Valente,* 456 U.S. 228 (1982). It is fairly clear, though, that courts now consider any solicitation ordinance as a restriction on First Amendment rights. This means that any regulation must meet certain criteria in order to be valid.

This article examines a number of court decisions regarding solicitation and provides guidance on how to properly draft an ordinance regulating this activity. Recent developments in this area may require officials to re-examine their ordinances and consider amendments in order to bring them into compliance with constitutional requirements.

Legitimate Goals

Although courts have recognized substantial First Amendment protection for door-to-door solicitors, *Martin v. Struthers,* 319 U.S. 141 (1943), the U.S. Supreme Court has upheld the right of a local jurisdiction to regulate solicitation so long as the regulation is in furtherance of a legitimate municipal objective. *See, e.g., Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981).

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objective behind the ordinance if it is questioned. Peddling, soliciting and door-to-door canvassing raise legitimate public protection concerns for municipal citizens and officials. In the interest of public protection, municipalities have the power to regulate persons engaged in these activities. To be valid, though, regulations must be substantially related to furthering any legitimate governmental objectives.

The two most frequently cited goals of solicitation ordinances are protecting the privacy of citizens, including the quiet enjoyment of their homes, *Carey v. Brown,* 447 U.S. 455, 471 (1980), and the prevention of crime, *Wisconsin Action Coalition v. Kenosha,* 767 F.2d. 1248 (7th Cir. 1985). In the right circumstances, courts have consistently upheld solicitation ordinances on these grounds. While other legitimate municipal objectives, such as protecting citizens from fraud and other deceptive practices, may well exist, the two mentioned here are perhaps most frequently relied upon by municipal officials seeking to justify a properly drafted solicitation ordinance.

Courts have upheld ordinances requiring solicitors to register with the city, to obtain identification cards, and allowing citizens to forbid solicitation at their residences by posting a sign, at least where the ordinances leave ample alternative channels of communication for solicitors by allowing them to have contact with those residents who want to hear their message. When a city goes beyond this, though, by outlawing noncommercial solicitation altogether or by being overly restrictive in terms of the hours during which solicitation is allowed (e.g., 9 a.m. to 5 p.m.) the courts have invalidated the ordinances. Part of the rationale for overturning these ordinances is that the city has unnecessarily substituted its judgment for that of its citizens. *See*, *Citizens for a Better Environment v. Village of Olympia Fields,* 511 F.Supp. 104 (N.D. Ill. 1980).

Many of the challenges to municipal solicitation ordinances have come from religious groups claiming their right to freely exercise their religion has been taken away. The general rule is that regulation in this area "must be done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly." *Thomas v. Collins*, 323 U.S. 516, 540-541 (1945).

For instance, in *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640 (1981), the United States Supreme Court was presented with a state statute requiring all groups desiring to solicit or distribute materials at a state fair to do so only from a fixed location. Space at the fairgrounds was rented on a first-come, first-served nondiscriminatory basis. The Krishnas sought to have this ordinance struck down so they could mingle with the crowd at the fair and distribute their literature. The state argued that its interest was in safety and ensuring the orderly movement of patrons at the fair. The Court upheld this statute as a valid time, place and manner regulation because it did not discriminate against the Krishnas. In addition, the Court noted that the statute allowed members of groups to talk with patrons at the fair as long as no funds or literature changed hands.

When these ordinances have been struck down, they generally censored a group or allowed one person in the government absolute discretion to decide which groups received permits to solicit and which groups did not. *See, International Society for Krishna Consciousness of Houston, Inc. v. Houston*, 689 F.2d 541 (5th Cir. 1982). Even where funds are being solicited for a religious purpose, if the government has a compelling interest in the reasonable regulation of a protected First Amendment activity, a narrowly-drawn regulation that furthers that interest will be upheld. However, not all regulations will be upheld. For example, a resolution of an airport commission banning all First Amendment activities within the airport terminal was held facially unconstitutional in *Board of Airport Commissioners of Los Angeles v. Jews for Jesus, Inc.,* 482 U.S. 569 (1987). And, in *International Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992), the U.S. Supreme Court held that a regulation banning repetitive solicitation of funds inside a terminal was reasonable.

Recently, the U.S. Supreme Court re-examined the issue of municipal regulation of solicitation in *Watchtower Bible & Tract Society of New York v. Stratton, Ohio*, 536 U.S. 150 (2002). In this case, the Court struck down a permit requirement for door-to-door solicitation and muddied the waters surrounding this already murky issue. The Court recognized that door-to-door solicitation is entitled to full First Amendment protection and that this type of solicitation is important for the dissemination of ideas, especially for those with little or no money. The Court found that to withstand a First Amendment challenge, a solicitation ordinance must find the appropriate balance between the affected speech and the governmental interests that the ordinance purports to serve. The Court held that the ordinance in this case did not further those interests. Here, the government sought to prevent crime and fraud. The Court found that this ordinance did not accomplish these goals, at least so far as noncommercial communication was concerned. The Court also found that the ordinance overly burdened noncommercial communication.

The impact of this case on local governments remains to be seen. Lower court cases since *Watchtower Bible* have found ways to distinguish this case.

For instance, in *Association of Community Organizations for Reform Now v. Town of East Greenwich*, 453 F. Supp. 2d 394 (D. R.I 2006), a federal district court in Rhode Island upheld a municipal ordinance requiring door-to-door solicitors obtain a permit and comply with a 7:00 p.m. curfew, arguing that the ordinance in this case was more narrowly drawn than the one in *Watchtower Bible* largely on the grounds that the regulation in question applied only to money solicitors. The court was also persuaded by other factors, including the fact that grant was

automatic once the requested information was provided; the requirement that background of solicitors and their sponsoring group be provided furthered important municipal interest in protecting residents from fraud, as it helped uncover solicitors with criminal records; the ordinance discouraged prospective burglars posing as canvassers; and the regulation imposed delays in grant of permit that were not burdensome.

And, in *Green v. City of Ralieigh*, 523 F.3d 293 (4th Cir. 2008), the Fourth Circuit Court of Appeals upheld a city ordinance that required picketers to notify the city beforehand of their intent to picket. See, also, *Boardley v. U.S. Department of Interior*, 605 F.Supp.2d 8 (D.D.C. 2009); *Marcavage v. City of Chicago*, 635 F.Supp.2d 829 (N.D.Ill. 2009); and *Watchtower Bible Tract Soc. of New York, Inc. v. Sanchez-Ramos*, ___ F.Supp.2d ___, 2009 WL 2461730 (D. Puerto Rico 2009).

While implying that local governments can place more extensive regulation on commercial communication than on communication that is made for political or religious purposes, the Court fell far short of endorsing this concept. How far municipalities can go in regulating any door-to-door solicitation is still unclear. At what point does door-to-door activity rise to the level that would allow the municipality to require a permit? The League will continue to follow this area of law and update you as additional litigation occurs.

Time, Place and Manner Restrictions

Under the First Amendment, reasonable time, place and manner restrictions will be upheld as long as the restriction is narrowly tailored to serve a significant government interest and provide alternative channels of communication to exist. *Perry Education Association v. Perry Local Educator's Association*, 460 U.S. 37 (1983).

In order to be valid, a solicitation ordinance must limit itself to placing reasonable time, place and manner restrictions on solicitors. These restrictions must be:
1) content-neutral;
2) serve a legitimate governmental objective;
3) leave open ample alternative channels of communication;
4) be narrowly tailored to serve the governmental objective.

See, *City of Watseka v. Illinois Public Action Council,* 796 F.2d 1547, 1552 (7th Cir. 1986), aff'd., 479 U.S. 1048 (1987).

Restrictions on Time

Municipalities often want to restrict the hours when solicitors may be active. Courts, though, disagree on what time restrictions are valid under the First Amendment. This makes drafting a valid ordinance difficult. The federal circuits are divided on even what standard of review to apply to these regulations. On one hand, the Third Circuit held that a town ordinance barring door-to-door canvassing after daylight hours was a reasonable time, place and manner restriction of speech that furthered the town's governmental interests in preventing crime and protecting the privacy of its residents, based on

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an "ample alternative channels of communication" standard. *See*, *Pennsylvania Alliance for Jobs & Energy v. Council of Munhall,* 743 F.2d 182 (3d Cir. 1984). In contrast, the Eighth Circuit has adopted a "less restrictive means" standard. *See*, *Association of Community Organization for Reform Now v. Frontenac,* 714 F.2d 813 (8th Cir. 1983). There is also the "least restrictive means" standard, which has been used by the Second Circuit. *See*, *New York City Unemployed & Welfare Council v. Brezenoff,* 677 F.2d 232 (2d Cir. 1982).

In *New Jersey Citizen Action v. Edison Township*, 797 F.2d 1250 (1986), the Third Circuit held that the defendant town's failure to show that ordinances barring door-to-door solicitation during evening hours were precisely tailored to serve the town's governmental interests in preventing crime, which precluded a finding that the solicitation ordinances in question were reasonable time, place and manner restrictions.

In *Wisconsin Action Coalition v. Kenosha,* cited above, the Seventh Circuit invalidated a city ordinance prohibiting charitable, religious and political solicitation between 8 p.m. and 8 a.m. While the court acknowledged the conflict among the circuits and expressed some preference for the "less restrictive means" standard, it decided that the impugned ordinance failed all of the review standards mentioned and it was not necessary to choose among them.

In *Watseka v. Illinois Public Action Council,* cited above, the U.S. Supreme Court affirmed without opinion a Seventh Circuit ruling which held that a city ordinance limiting door-to-door soliciting to the hours between 9 a.m. and 5 p.m., Monday through Saturday, violated the First Amendment. The Seventh Circuit held that the ordinance was not narrowly tailored to achieve a legitimate municipal interest in preventing fraud and protecting the privacy of residents. The court held that the municipality could prevent fraud by licensing solicitors and protect privacy by having homeowners post signs outside their homes stating that they did not wish to be disturbed. Also, the court ruled that the ban on solicitation during the hours from 5 p.m. and 9 p.m., which was the time period requested by the solicitors, was not sufficiently connected to the city's interest in preventing crime.

The court found that by being more restrictive than the legitimate privacy and quiet enjoyment concerns its citizens demanded, the municipality had suppressed the protected speech of the solicitors. Further, the court concluded that the city had subordinated the First Amendment rights of those residents who would be willing recipients of the solicitors' message during evening hours to the nuisance concerns of residents who did not wish to be disturbed during the same hours. In voiding the ordinance, the court noted that "[e]ven Girl Scouts will have a difficult time selling their cookies by 5 p.m." The court also reasoned that the city failed to offer evidence that its other legitimate objective, crime prevention could not have been satisfactorily served by enforcing laws against trespass, fraud, burglary, etc., or by merely enforcing the registration requirements for solicitors that the city had already adopted.

Ordinances restricting the time solicitors can be active must be supported by compelling evidence that the time restrictions are needed to prevent criminal activity by persons claiming to be solicitors. Officials must be careful to make sure that the time restrictions they place on solicitors are valid under the circumstances. Courts have held that ordinances that fail to permit some evening activity by solicitors are not sufficiently tailored to serve the municipal interests. *Association of Community Organizations for Reform Now v. Frontenac, supra.*

Restrictions on Place

In addition to time restrictions, cities may also use their police power to decide where solicitors and peddlers may carry out their activities. Such regulations receive a higher degree of judicial scrutiny if they seek to restrict solicitation or peddling in a public forum than if they attempt to do so in a private forum. For example, a post office sidewalk, although set back from the street and parallel to a municipal sidewalk, is not a traditional public forum. Therefore, a United States Postal Service regulation prohibiting all solicitation on postal premises did not violate the First Amendment when used to bar nondisruptive political solicitation on a post office sidewalk. *United States v. Kokinda,* 497 U.S. 720 (1990).

Thus, a question arises as to which areas are generally considered public forums and which are not. Some courts that have ruled in cases involving canvassers and solicitors have found nonpublic forums to include:

• the doorways to private homes, *Pennsylvania Alliance for Jobs & Energy v. Council of Munhall,* 743 F.2d 182 (3d Cir.1984),

• residential areas of university campuses, *Chapman v. Thomas,* 743 F.2d 1056 (4th Cir. 1984), *cert. denied*. 471 U.S. 1004 (1985), and

• even state-owned sports complexes, *International Soc. For Krishna Consciousness, Inc v. New Jersey Sports & Exposition Authority,* 691 F.2d 155 (3d Cir. 1982).

Public forums, on the other hand, have been found in such places as:

• airports, *Fernandes v. Limmer,* 663 F.2d. 619 (5th Cir. 1981), *rehearing denied,* 669 F.2d. 729 (5th Cir. 1982), *and cert. denied,* 458 U.S. 1124 (1982), and

• the sidewalks or parking lots of hospitals, *Dallas Association of Community Organizations for Reform Now v. Dallas County Hospital Dist.,* 670 F. 2d 629 (5th Cir. 1982), *rehearing denied,* 680 F.2d 1391 (5th Cir. 1982). *and cert. denied,* 459 U.S. 1052 (1982).

Ordinances that regulate solicitation on streets, public thoroughfares and certain areas of town will be upheld if they

are reasonable. *See e.g., Good Humor Corp. v. Mundelein*, 211 N.E.2d 269 (Ill. 1965). Government at various levels can also regulate solicitation on sidewalks, in front of businesses, in railroad stations, in airports and in other public places so long as such regulations do not unreasonably infringe on First Amendment rights. *See*, *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640 (1981); *International Society for Krishna Consciousness v. Griffin*, 437 F.Supp. 666 (W.D. Pa. 1977); *Slater v. El Paso*, 244 S.W.2d 927 (Tex. Civ App. 1951); *Wade v. San Franciso*, 186 P.2d 181 (Cal. App. 1947). A municipal ordinance banning the sidewalk sale of all merchandise is a valid time, place and manner restriction that is not invalid under the First Amendment. *One World One Family Now v. Honolulu*, 76 F.3d 1009 (9th Cir. 1996). The Eleventh Circuit Court of Appeals has upheld a municipal ban against tables placed on sidewalks. *International Caucus of Labor Committees v. Montgomery*, Ala., 87 F.3d 1275 (11th Cir. 1996).

In *Heffron v. International Society for Krishna Consciousness*, the Supreme Court held that a State Fair rule restricting distribution and sale of written materials and solicitation of funds to booths rented on a nondiscriminatory first-come, first-served, basis constituted a permissible time, place and manner restriction on a religious group's First Amendment right to perform ritual distribution of literature and solicitation of contributions.

Solicitation may be restricted on the premises of schools and colleges, because there is no absolute right to use all parts of the school building or its immediate environs for an unlimited expressive purpose. *Grayned v. Rockford*, 408 U.S. 104 (1972); *Healy v. James*, 408 U.S. 169 (1972). Also, in a case upholding a ban imposed by a state university on commercial solicitation in dormitory rooms, the Supreme Court found that governmental restrictions upon commercial speech need not be the absolute least restrictive means available to achieve the desired end. *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469 (1989). Rather, the restrictions require only a reasonable "fit" between the government's ends and the means chosen to accomplish those ends.

And, in *ISKCON Miami, Inc. v. Metropolitan Dade County*, 147 F.3d 1282 (11th Cir. 1998), the Eleventh Circuit Court of Appeals held that Miami regulations banning the sale of literature and solicitation of money inside and outside of its terminal facilities did not violate the First Amendment. The Eleventh Circuit Court of Appeals has also upheld a municipal ordinance banning tables from public sidewalks as a narrowly-tailored, content neutral regulation. *International Caucus of Labor Committees v. Montgomery, Ala.*, 111 F.3d 1548 (11th Cir. 1997).

Restrictions on the Manner of Soliciting and Licensing

Municipalities may also place some restrictions on the manner in which soliciting activities are conducted. This is frequently done through licensing requirements. A city's authority to require persons to register with the local police and obtain a permit or license before engaging in business activities within local jurisdiction can be applied to solicitors and peddlers. However, as with other licensing regulations, any ordinance adopted pursuant to that authority must be reasonable. *Collingswood v. Ringgold*, 331 A.2d 262 (N.J. 1975), *cert. denied*, 426 U.S. 901 (1976). Additionally, in the *Watchtower Bible* case noted above, the U.S. Supreme Court indicated that in some instances, these type restrictions may impermissibly infringe on protected First Amendment activities, especially where noncommercial solicitation is involved.

A solicitation ordinance that has been drafted so as to allow a city to use its licensing power to prohibit certain solicitors based upon the content of their message would violate the First Amendment. *Carey v. Brown*, 447 U.S. 455 (1980). However, a city may require persons representing organizations seeking charitable contributions to register with the city and provide certain membership and financial information if the city issues the licenses in a nondiscretionary fashion. *International Society for Krishna Consciousness of Houston, Inc. v. Houston*, 689 F.2d 541 (5th Cir. 1982), and if the regulation is sufficiently narrowly drawn to further legitimate government interests.

Ordinances cannot vest overly broad discretion in licensing officials to issue or deny a solicitation permit. *Schneider v. State*, 308 U.S. 147 (1939). An administrative official may not be empowered with unbridled discretion to determine, for example, the validity of a solicitor's message and use that determination as a basis for exercising prior restraint on the solicitation by arbitrarily denying a permit. *See generally, Largent v. Texas*, 318 U.S. 418; *Cantwell v. Connecticut*, 310 U.S. 296 (1940). But, an ordinance requiring the filing of a registration statement containing objective information that identifies groups or individuals and makes the issuance of a permit mandatory where the information is furnished is not facially invalid as a restraint on First Amendment freedoms. *Secretary of State of Maryland v. Munson*, 467 U.S. 947 (1984).

The issue of unguided direction is not the only relevant consideration for the drafter in putting together the licensing provisions of a solicitation ordinance. Other significant items to consider are:

1) **License Fees -** Local governments have been given broad discretion in imposing license fees on solicitors and peddlers. These fees, however, cannot be excessive. Fees

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Legal Clearinghouse

NOTE: Legal summaries are provided within this column; however, additional background and/or pertinent information will be added to some of the decisions, thus calling your attention to the summaries we think are particularly significant. We caution you *not* to rely solely on a summary, or any other legal information, found in this column. You should read each case in its entirety for a better understanding.

ALABAMA COURT DECISIONS

Courts: A trial court lacked subject matter jurisdiction to hold a defendant in contempt and sentence her to the community corrections program based on her failure to pay court-ordered monies. The trial court found the defendant in contempt instead of revoking the defendant's probation. A civil contempt order may not be used to circumvent the rule prohibiting the imprisonment of an indigent defendant for the inability to pay court-ordered monies. *Johnson v. State***,** 17 So.3d 261 (Ala.Crim.App.2009)

Forfeitures: To obtain the forfeiture of a vehicle pursuant to the Alabama Uniform Controlled Substances Act, the state must establish that the vehicle has been used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment' of a controlled substance. *Atkins v. State*, 16 So.3d 792 (Ala.Civ. App.2009)

Forfeitures: In a forfeiture case involving currency that is allegedly connected to drug activity, the State is required to prove to the trial court's reasonable satisfaction that the money seized was: (1) furnished or intended to be furnished by the respondents in exchange for a controlled substance; (2) traceable to such an exchange; or (3) used or intended to be used to facilitate a violation of any law of this state concerning controlled substances. *Gardner v. State*, 17 So.3d 223 (Ala. Civ.App.2009)

Retirement System: A state employee chose to delay making his daughter the beneficiary of his death benefits until his retirement benefits became due and payable, and, thus, his ex-wife remained beneficiary at time of the employee's death prior to retirement. The retirement benefits had not become due and payable at time of his death. The employee filled out a form on which he could have chosen to immediately make his daughter his beneficiary, but he chose not to. *Hamilton v. Employees' Retirement System of Alabama***,** 14 So.3d 839 (Ala.2009)

Schools: County boards of education, local agencies of the state charged by the legislature with the task of supervising public education within the counties, are clothed with constitutional immunity from suit. *Ex parte Hale County Bd. of Educ.*, 14 So.3d 844 (Ala.2009)

Utilities: A water and wastewater board which hired away an employee who had been trained by a city for certification as a grade I distribution system operator was required to reimburse the city for the salary and related training expenses rather than just expenses related to classroom or formal instruction. Section 22-25-16, Code of Alabama 1975, requires a city to be reimbursed for training expenses if a municipal utility board hires a water operator away within 24 months after completing the certification requirements. The statute does not limit reimbursable expenses to only formal or classroom training, and the definition of "trainee" in a related statute indicated that the reimbursable expenses were restricted to the one period during which an employee was considered a trainee. *Water and Wastewater Bd. of City of Madison v. City of Athens*, 17 So.3d 241 (Ala.Civ.App.2009)

DECISIONS FROM OTHER JURISDICTIONS

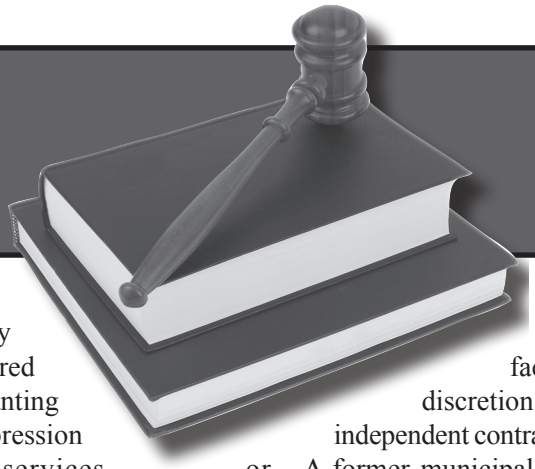
Firearms: The provision of the Juvenile Delinquency Act banning juvenile possession of handguns did not violate the Second Amendment's right to bear arms, in light of the existence of a longstanding tradition of prohibiting juveniles from both receiving and possessing handguns, and the provision's narrow scope and exceptions. *U.S. v. Rene E.*, --- F.3d ----, 2009 WL 3170312 (1st Cir.2009)

First Amendment: First Amendment rights of expression are more limited during a meeting than in a public forum, as, for example, a street corner. A plaintiff's First Amendment right of expression was not violated when he was ejected from a city council meeting after he gave a Nazi salute in the presiding officer's direction, where it was clear that the salute was in support of disruption that had just occurred in the back of the meeting room and that the plaintiff was protesting the good faith efforts to enforce the council's rules. *Norse v. City of Santa Cruz***,** --- F.3d ----, 2009 WL 3582694 (9th Cir.2009)

ATTORNEY GENERAL'S OPINIONS

Alcoholic Beverages: A municipal option election held pursuant to sections 28-2A-1 through 28-2A-3 of the Code of Alabama must be conducted by the municipality in the same manner that the municipality conducts other municipal elections regardless of the date of the election. AGO 2010-003

E-911: The E-911 Board ("Board") is not required to provide routine dispatching services for law enforcement agencies. The Board may enter into a contract with such



agencies to do so, based on such charges as are mutually agreed upon by the parties. The E-911 Board is required to dispatch for an emergency warranting a response in the areas of fire suppression and rescue, emergency medical services or ambulances, hazardous material, disaster, or major emergency occurrences, and law enforcement activities. AGO 2010-006

Elections: After the general municipal election, but prior to a runoff election, the death of the candidate who received the second most votes in the general municipal election effectively withdraws his candidacy in the runoff election, and no runoff election is required. The remaining candidate for mayor in the runoff election should be declared the winner of the election. The candidate receiving the third most votes does not move into second place and become a candidate in the runoff election. AGO 2010-007

Utilities: Members of a Waterworks Board formed pursuant to sections 11-50-310, *et seq.*, serve staggered six-year terms. The minutes of the council meetings should clearly reflect the appointments to the board, the date of the appointment, the term for which the person is appointed, whether it is to fill a vacancy and the place number if one is assigned to the position. Where there is no clear record as to when each particular seat is up for reappointment, how long the terms lasts, or if any of the appointments were made in accordance with state law, the town council and the members of the board may, by agreement, establish numbered places and set staggered terms for the board members. AGO 2010-002

Utilities: A Water, Sewer, and Fire Protection Authority, formed pursuant to sections 11-88-1, *et seq*., is authorized to revise its rates and assess consumers in a manner that the Authority deems to be reasonable given the particular circumstances. AGO 2010-004

ETHICS COMMISION ADVISORY OPINIONS

AO No. 2009-09: A municipal staff planner may not serve as an independent contractor, contracting with private engineering firms to provide planning design for new land developments within the jurisdiction of the city by which he is employed, as these developments would be inspected by his employer. A municipal staff planner may serve as an independent contractor, contracting with private engineering firms to provide planning design for new land developments outside his jurisdiction, when he would have no interaction or dealings with the city by which he is employed; provided, all work done in connection with his independent contracting firm is done on his own time, and that there is no use of city time, labor, equipment, facilities or other public property under his discretion or control to assist him in performing his independent contracting duties or in obtaining opportunities. A former municipal staff planner may start a business and serve as an independent contractor, contracting to private engineering firms planning design for new land developments within the jurisdiction of his former employer. However, for a period of two years, he may not represent clients of his consulting company before his former employer.

AO No. 2009-10: A copy of a contract to provide services entered into by a public official, public employee, member of the household of the public official/public employee or a business with that person is associated, which is to be paid in whole or in part out of state, county or municipal funds must be filed with the Ethics Commission within ten (10) days after the contract has been entered into, regardless of the amount of that contract, or whether or not the contract was obtained through competitive bid.

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5: Use your paper towel to turn off the faucet.

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1: Apply gel to palm.
2: Rub the gel over all surfaces of hands and fingers until dry.

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charged cannot be prohibitive or confiscatory. Also, the fees cannot place an undue burden on interstate commerce. *See*, *Moyant v. Borough of Paramus*, 154 A.2d 9 (N.J. 1959); *Shapiro v. Newark*, 130 A.2d 907 (N.J. Super. 1957). A New York court has ruled that a municipal tax on transient retailers who operate at temporary business sites in the municipality improperly discriminates against interstate business in favor of local businesses. *Homier Distributing Co. v. Albany, NY*, 681 N.E.2d 390 (N.Y. 1997).

2) **Use of Funds** - Courts generally disfavor ordinances that specify the uses of solicited funds as a condition for granting a permit. In *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980), the Supreme Court struck down an ordinance requiring that at least 75 percent of the receipts from charitable solicitations be used only for charitable purposes. The Court held that less restrictive alternatives could be used to achieve the government's legitimate interest in preventing fraud and other deceptive practices.

3) **Bond requirements** - Some cities require commercial solicitors and peddlers to provide a bond to the city. Like any other provision in a solicitation ordinance, bonding requirements must be reasonable and comply with state law. *See*, *Citizens For a Better Environment v. City Chicago Heights*, 480 F.Supp. 188 (N.D. Ill. 1979); *Holy Spirit Assn. For the Unification of World Christianity v. Hodge*, 582 F. Supp. 592 (N.D. Tex. 1984). In a New Jersey case, for example, an ordinance requiring a surety bond in the amount of $1,000 was found to bear no reasonable relation to the amount of business done. *Moyant v. Borough of Paramus*. The court decided that the requirement was unduly oppressive and held that it was an unreasonable exercise of police power.

4) **Exemptions -** Finally, many ordinances contain provisions exempting certain types of solicitors from licensing requirements altogether. In some earlier rulings these exemptions survived constitutional scrutiny. For instance, in *Cancilla v. Gehlhar*, 27 P.2d 179 (Ore. 1933), the Oregon Supreme Court upheld an exemption that applied to farmers who sold products from their own farms. However, in later decisions various sorts of exemption clauses were found unconstitutional. The Washington Supreme Court, in *Larson v. Shelton*, 224 P.2d 1067 (Wash. 1950), struck down a licensing exemption for honorably discharged war veterans as a violation of the Equal Protection Clause of the Fourteenth Amendment. That court also viewed the exemption as a grant of special privileges and immunities. Every drafter of a solicitation ordinance should consider the possibility that selecting a particular type of solicitor for exemption, while perhaps allowable in an extremely limited number of instances, may subject the municipality to Equal Protection, First Amendment and other types of constitutional challenges. Uninvited door-to-door solicitation by one person invades the privacy and repose of the home just as much as by another. However, the *Watchtower Bible* case does seem to permit more restriction on commercial speech, at least if the entity can demonstrate how the restrictions further a legitimate governmental interest.

Regulating Commercial Solicitation

Although the Supreme Court now acknowledges that commercial speech enjoys First Amendment protection, it is protected to a lesser extent than noncommercial speech. This means that commercial speech is subject to greater regulation than is permissible in the noncommercial realm. *Ohralik v. Ohio State Bar Assn*., 436 U.S. 447, 448 (1978).

In *Central Hudson Gas & Electric Corp v. Public Service Comm.,* 447 U.S. 557 (1980), the Supreme Court set out a four-part test for sustaining a government restriction on commercial speech. Under the *Central Hudson* analysis, commercial speech is entitled to First Amendment protection only if it concerns lawful activity and is not misleading. Under this standard, a restriction will be upheld if it meets the following requirements: the governmental interest cited as the basis for the restriction is substantial; the regulation directly advances the governmental interest asserted; and the regulation is not more extensive than is necessary to serve that interest.

Making door-to-door sales through in-person solicitation, assuming the absence of unlawful activity or misleading information, has been found to include a sufficient element of commercial speech to qualify for First Amendment protection under the first part of the *Central Hudson* standard. *See*, *Project 80's Inc. v. City of Pocatello*, 876 F.2d 711 (9th Cir. 1988). Also, where local governments have asserted an interest in protecting the privacy of citizens, or crime prevention, as the reasons for enacting restrictions, the federal courts have had little difficulty in accepting these as substantial state interests, at least where evidence of a problem exists. *See*, *Frisby v. Schultz*, 487 U.S. 474 (1988); *Carey v. Brown*, 447 U.S. 455 (1980); *Watchtower Bible*. As a result, most municipal ordinances that regulate commercial solicitors could satisfy this second part, regardless of the specific wording of the ordinance.

The difficulties that commercial solicitation ordinances have encountered, particularly when they are too broadly worded, have occurred when the courts have applied the third part of the *Central Hudson* test. Ordinances that attempt to ban all uninvited peddling or solicitation in the name of privacy protection and crime prevention become particularly vulnerable when the courts begin to assess the extent to which these permissible governmental interests are directly advanced by such restrictions. A good example is the *Project 80's* case, where the Ninth Circuit noted that "privacy is an inherently individual matter" and it is therefore difficult to violate a person's privacy unless the person wishes to be left alone.

The court went on to criticize the ordinances of Pocatello and Idaho Falls, Idaho, for seeking to make the choice for the resident regarding whether to receive uninvited solicitors by imposing a complete ban on uninvited peddling. The court ruled the ordinances did not protect privacy when applied to residences whose occupants welcome uninvited commercial solicitors. The court did, however, acknowledge at least a marginal relationship between the cities' interest in reducing crime and the act of prohibiting strangers from summoning residents to their doors.

Some solicitation ordinances that cleared this third hurdle by convincing the court that privacy and crime prevention were directly served by the ordinance's restrictions, were nonetheless declared invalid because the restrictions went further than necessary to accomplish those ends. The so-called "least restrictive alternative" requirement, the last part of the *Central Hudson* test, has also been used to strike down ordinances that prohibit all uninvited solicitation. In *Project 80's*, the court noted that residents who want privacy can post a notice to that effect and that crime can be prevented by requiring solicitors to register with the city. The court concluded that less restrictive means were clearly available to the cities and that both cities' ordinances had swept too broadly in attempting to protect privacy for either one to satisfy the fourth requirement under *Central Hudson*.

The U.S. Supreme Court made a similar point in *Watchtower Bible*, noting the governmental interest in privacy could just as easily have been served by less restrictive means such as requiring citizens not wishing to be disturbed to post "no soliciting" signs on their front doors.

Green River Ordinances

This analysis brings us back to the Green River ordinances. Green River ordinances typically declare uninvited door-to-door canvassing to be a nuisance punishable by fine or imprisonment. The Supreme Court upheld this type of ordinance in *Beard v. Alexandria*, 341 U.S. 622 (1951), finding that a municipality's police power permits reasonable regulation of door-to-door solicitation for purposes of public safety.

Despite the *Beard* ruling, some state courts have invalidated Green River ordinances on state constitutional grounds. For instance, in *Hillsboro v. Purcell*, 761 P.2d 510 (1988), the Oregon Supreme Court struck down on state constitutional grounds an ordinance banning uninvited residential door-to-door solicitation by merchandise peddlers. Also, the Ninth Circuit struck down the two Idaho ordinances mentioned above which banned uninvited solicitation at residences by merchandise peddlers, on the grounds that the ordinances were neither the least restrictive alternative available to further governmental interests in protecting residential privacy and preventing crime nor were they valid time, place and manner restrictions. It is worth noting, however, that this judgment was vacated and remanded without opinion by the Supreme Court. *Idaho Falls v. Project 80's Inc*., 493 U.S. 1013 (1990). Additionally, some courts have held that the least restrictive alternative standard applies only where there is a contentbased attempt to regulate solicitation. *Pennsylvania Alliance for Jobs & Energy v. Council of Munhall, supra.* The *Munhall* case required that there be ample means of communication available to solicitors.

Green River ordinances have come under increasing attack. Therefore, a solicitation ordinance drafter should exercise a degree of caution when including a Green River provision in a solicitation ordinance. It is important to remember that commercial door-to-door solicitation or peddling is a lawful business rather than an inherent nuisance. Like any other business that is not considered a nuisance under state law, solicitation does not become a public nuisance merely because the municipality declares it to be so and acts to restrict it accordingly. *McQuillian Mun. Corp*., Section 24.378 (3rd Ed. Revised 1997).

Roadway Solicitation

Solicitation along a roadway or highway is prohibited by state law unless the municipality or county with jurisdiction over the roadway or highway grants a permit allowing the solicitation in question. AGO 1995-308. Section 32-5A-216(b), Code of Alabama 1975, as amended, states that no person shall stand on a highway to solicit employment, business or contributions from the occupant of any vehicle, nor for the purpose of distributing any article, unless otherwise authorized by official permit of the governing body of the city or county having jurisdiction over the highway.

The Attorney General advised Hon. Al Shumaker on July 6, 1983, that this statute does not give a municipal governing body the authority to allow charitable solicitation on state highways. Many municipalities have adopted ordinances prohibiting charitable solicitation on all streets and roads within the municipality. Obstructions of public highways in order to solicit donations from motorists are prohibited by Section 32-5A-216 of the Code, unless a permit for such solicitation is granted by the local governing body. AGO 1981-216 (to Mayor Jerry C. Pow, February 3, 1981).

At least one court, the Ninth Circuit in *ACORN v. Pheonix*, 798 F.2d 1260 (9th Cir. 1986), has upheld a municipal ordinance prohibiting persons from standing on the street to solicit contributions from occupants of motor vehicles. This ruling, however, has been questioned in cases such as *People v. Barton*, 795 N.Y.S.2d 423 (N.Y.City Ct. Dec 14, 2004), *A.C.L.U. of Nevada v. City of Las Vegas*, 466 F.3d 784 (9th Cir. 2006), and *Berger v. City of Seattle*, 569 F.3d 1029 (9th Cir. 2009). ■

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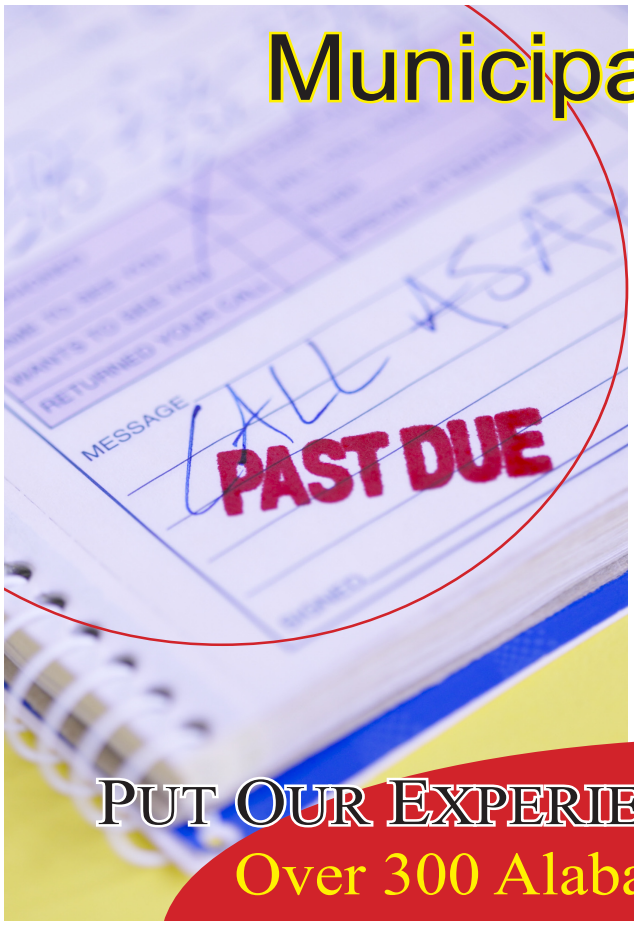

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