



THE COMMONWEALTH OF MASSACHUSETTS
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October 31, 2016

RECEIVED

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DUDLEY BOARD OF SELECTMEN

Ora E. Finn, Town Clerk
Town of Dudley
71 West Main Street, Room 207
Dudley, MA 01571

Re: Dudley Annual Town Meeting of May 23, 2016 - Case # 8001
Warrant Articles # 16, 21 and 31 (Zoning)
Warrant Articles # 11, 14, 15, 29 and 30 (General)

Dear Ms. Finn:

Article 29 – We disapprove the amendments adopted under Article 29 because they are inconsistent with the Constitution and laws of the Commonwealth, as more fully explained below. **[Disapproval # 1 of 1]**¹

The amendments adopted under Article 29 would have added a new Article 50, “Solicitors,” to the Town’s general by-laws. The by-law purports to require door to door salespersons to register with the Dudley Police Department and undergo a criminal record check before soliciting door to door. The by-law authorizes the Chief to temporarily prohibit any persons for not being “of good repute as to morals and integrity” and allows for an appeal to the Board of Selectmen from that determination.

I. Overview of Applicable Law.

The extent of a municipality’s authority to regulate door-to-door solicitation and canvassing has been the subject of considerable litigation. Solicitation, whether for commercial or noncommercial purposes, is an activity that is entitled to some measure of protection under the First Amendment to the U.S. Constitution, as applied to the states through the Fourteenth Amendment. See Central Hudson Gas & Elec. Corp. v. Public Service Comm’n, 447 U.S. 557 (1980) (commercial speech entitled to First Amendment protection); Riley v. Nat’l Fed’n for the Blind, 487 U.S. 781 (1988) (regulations of professional solicitation subject to First Amendment scrutiny); Benefit v. City of Cambridge, 424 Mass. 918, 922 (1997) (“soliciting contributions is

¹ In a decision issued August 30, 2016 we approved Articles 11, 14, 15 and 30 and placed Articles 16, 21 and 31 on “hold” pursuant to the provisions of Chapter 299 of the Acts of 2000.

expressive activity that is protected by the First Amendment”). By-laws that are limited only to solicitation for commercial purposes are more likely to withstand a constitutional challenge. *See Watchtower Bible & Tract Society, Inc. v. Village of Stratton*, 536 U.S. 150, 165 (2002) (“Had this provision been construed to apply only to commercial activities and the solicitation of funds, arguably the ordinance would have been tailored to the Village’s interest in protecting the privacy of its residents and preventing fraud.”).

Because solicitation and canvassing are First Amendment activities, any permitting or registration requirement constitutes a prior restraint. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 226 (1990) (requiring a permit or license to engage in First Amendment activity is a form of prior restraint). The Supreme Court has held that any permitting system for solicitation, which impinges on First Amendment activity, must set a definite time limit within which the decision maker must either issue the permit or go to court to enjoin the activity. “[A] prior restraint that fails to place limits on the time within which the decision maker must issue the license is impermissible.” *FW/PBS, Inc.*, 493 U.S. at 226.

II. Inconsistency with the Constitution and Laws of the Commonwealth.

The proposed Article 50 does not establish any time limit within which the Chief of Police must either allow or prohibit the soliciting activity. Permission to solicit is contingent upon the applicant passing a criminal record check, but there are no time limits within which the criminal record check must be completed and a decision made. The Supreme Court has previously held that a 30-day time limit for permit issuance was an unconstitutional prior restraint on protected speech where the 30-day limit was contingent upon various municipal inspections being completed, and there was no time limitation for those inspections to be completed. *See FW/PBS*, 493 U.S. at 227. Likewise here, the by-law provides no assurance to the applicant that the background check will be completed within a certain time.

In addition, the by-law lacks standards and criteria to guide the Police in determining whether to grant permission to solicit. Although there is a reference to those persons not “of good repute and to morals and integrity” under G.L.c. 101, the by-law does not limit the Chief to disapproving only those applicants. Without standards and criteria to guide the Police Department in the decision-making process, the by-law amendments grant the Police unguided discretion in determining whether to grant permission to solicit. *See FW/PBS*, 493 U.S. at 225-26 (no system of prior restraint may place “unbridled discretion in the hands of a government official or agency.”) While it appears that passing a background check is required, it is unclear what background check information would result in a determination that the applicant is not suitable to conduct door-to-door sales, or whether such a determination is the only grounds for denying a permit.

The lack of: (1) a definite time limit within which the Police must either issue or deny permission to solicit; and (2) standards and criteria to guide the Police in making their determination, make the by-law’s registration/permission requirement facially unconstitutional. Because the registration/permission requirement is the foundation of the by-law, we must disapprove the proposed by-law in its entirety. We are happy to work with the Town to review proposed amended text if the Town wishes to re-visit this topic at a future town meeting.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Margaret J. Hurley

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cc: Town Counsel Gary S. Brackett



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SPRING ANNUAL TOWN MEETING
MAY 23, 2016

Action Taken on: May 23, 2016

The FAA recommended that Article 29 be approved as written. The motion was made and seconded.

ARTICLE 29: Unanimously accepted to amend the Dudley General Bylaws by adding the following new Article to be numbered Article 50:

SOLICITORS BY-LAW

No person, firm, or corporation shall offer for sale, solicit funds, or offer services door-to-door within the Town of Dudley without prior registration with the Dudley Police Department. Said registration shall consist of providing a valid government issued photo identification for all canvassers as well as an official document or identification from the firm, corporation, or organization they represent. All persons are subject to a criminal record check. Individuals who otherwise may be disqualified for not being "of good repute as to morals and integrity," such as in cases for permits issued to Hawkers or Peddlers under MGL Chapter 101, may be temporarily prohibited from canvassing in town by the Chief of Police or his designee. Those persons denied permission may appeal the Chief's decision to the Board of Selectmen. Canvassing is to be done during daylight hours only. Provided, nevertheless, the above requirement shall not apply to any political, charitable or religious organizations duly chartered under the laws of the States or of the Federal Government nor shall they apply to persons running for political office. Each violation of this By-law shall be punishable by a fine of Twenty Dollars (\$20.00) for each offense and will be disposed of in accordance with the provisions set forth in these bylaws.

A True Copy. Attest: Ora E. Finn
Ora E. Finn, Dudley Town Clerk

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