



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION
1350 MAIN STREET
SPRINGFIELD, MASSACHUSETTS 01103-1629

THOMAS F. REILLY
ATTORNEY GENERAL

September 19, 2003

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03 SEP 22 PM 1:41
TOWN CLERK
SUDBURY, MASS

Barbara A. Siira, Town Clerk
322 Concord Road
Sudbury, MA 01776

RE: Sudbury Annual Town Meeting of April 7, 2003 — Case # 2579
Warrant Article # 53 (General)
Warrant Articles # 51 and 52 (Zoning)

Dear Ms. Siira:

Articles 51 and 52 - I return with the approval of this Office the amendments to the town by-laws adopted under these Articles on the warrant for the Sudbury annual town meeting that convened on April 7, 2003.

Article 53 - I return with the disapproval of this Office the amendments to the town by-laws adopted under this Article.

The amendments adopted under Article 53 delete the town's existing Door-to-Door Solicitation by-law in its entirety and insert a new Door-to-Door Solicitation by-law.

Section (b) "Definitions" defines "Door-to-Door Solicitation" as follows:

Any person who travels from door to door within the Town soliciting something for any organization not incorporated under Chapter 180 of the General Laws (not-for-profit organizations), whether selling something or not, is conducting door-to-door solicitation.

(Emphasis added.)

Section (b) defines "Person" as follows:

For purposes of these regulations, the persons being regulated herein are those persons over the age of 16 who are engaging in the activities regulated herein for or on behalf of for profit organizations.

Section (g) of the proposed by-law provides exemptions from the proposed by-law and provides as follows:

These regulations shall not apply to any persons conducting a temporary sale of items upon his or her property commonly known as "garage sale" or "yard sale", nor to any



persons engaged in the foregoing activities for or on behalf of a not-for-profit organization incorporated under Chapter 180 of the Massachusetts General Laws.

(Emphasis added.)

We disapprove and delete in their entirety, the amendments adopted under Article 53 as inconsistent with the First Amendment to the United States Constitution and Article 16 of the Massachusetts Declaration of Rights. **[Disapproval # 1 of 1]** The definition of door-to-door solicitation would seem to apply to all persons, except those incorporated in accordance with G.L. c. 180, including unincorporated charitable, educational, political, and religious organizations that enjoy protections accorded under the First Amendment of the United States Constitution and Article 16 of the Massachusetts Declaration of Rights and may even include organizations that are exempt under federal tax laws. Section (g) provides specific exemptions from the by-law's provisions for non-profit organizations, but does not exempt unincorporated organizations that enjoy federal and state constitutional protection. While the town may be attempting to make the by-law consistent with Watchtower Bible & Tract Society of New York, Inc. et al. v. Village of Stratton, 122 S. Ct. 2080 (2002), it has fallen short of that goal.

In Watchtower, the Supreme Court invalidated a municipal ordinance that required a permit to engage in door-to-door speech. The ordinance in this case prohibited canvassers from going on private property for any cause unless they have a permit; however, "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." Watchtower, 122 S. Ct. at 2089. The proposed by-law would include non-commercial solicitation if the entity is not incorporated under G.L. c. 180. However, such non-commercial speech would enjoy the protections articulated in Watchtower.

We also call your attention to Section (d), which pertains to registration requirements. Specifically, Section (d) (1) (i) requires an applicant to list whether the applicant has ever been convicted of a felony or certain listed misdemeanors. Section (d) (1) (i) provides in pertinent part as follows:

The Chief of Police shall approve the application within five (5) days of its filing unless he determines either that the application is incomplete, the applicant is a convicted felon, has been convicted of any of the above listed misdemeanors, or is a fugitive from justice.

Section (d) (1) (i) prohibits any person convicted of a felony or certain misdemeanors from obtaining a license to solicit in the town. Section (d) (1) (i) does not include any mechanisms for applicants with criminal records to rebut the presumption that they are a danger to the community. We suggest that the town discuss with town counsel whether the above-quoted text in Section (d) (1) (i) violates procedural due process rights of applicants.

For the foregoing reason, we disapprove and delete the amendments adopted under Article 53.

Note: General Laws Chapter 40, Section 32, requires that both general and zoning by-laws and

by-law amendments, once approved by the Attorney General, must be posted and published by the Town Clerk before they may be deemed to take effect. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that 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 voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Very truly yours,

THOMAS F. REILLY
ATTORNEY GENERAL



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enc.
pc: Town Counsel