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Opinion No. 06-042

Municipal Ordinance Prohibiting Political Campaign Signs in Public Right-of-Way

QUESTIONS

1. Whether, under a Memphis City ordinance, public employees may remove political campaign signs from utility poles and public rights-of-way?

2. If valid, is there any recourse against the action?

OPINIONS

1. Yes. Public employees may remove political campaign signs from utility poles and public rights-of-way. The Memphis ordinance regulating signage, including political campaign signs, does not conflict with statutory or constitutional law.

2. Assuming the ordinance was properly enacted, it is a valid exercise of municipal power. Resort must be had to the political process to seek change in the ordinance.

ANALYSIS

The information provided to this Office is as follows: A political candidate's campaign signs were on city property. Public employees removed the signs because they violated a local ordinance prohibiting campaign signs on utility poles and public rights-of-way. The public employees also removed other candidates' signs that violated the ordinance.

The City of Memphis has an ordinance regulating signs that are intended to be read at ground level from any public right-of-way, including campaign signs posted on public rights-of-way. The purpose of this ordinance is as follows:

> Section 16-112-1[1] Purpose and scope.
> These regulations are designed to protect and promote the public health, safety and welfare by controlling the type, number, location and physical dimensions of signs, to prevent the disruptions, obstructions and hazards to vehicular and pedestrian

[1] http://municipalcodes.lexisnexis.com/codes/memphis

> traffic that signs may cause, and to enhance the quality of the environment in residential and nonresidential districts. The purpose of this section is to regulate signs that are intended to be read at ground level from any public right-of-way.

Section 16-112-1, § A.14 speaks specifically to political signs stating as follows:

> Temporary political campaign or referendum signs, including their supporting structures, are permitted, **provided they** are erected no longer than ninety (90) days prior to any election, and **are not placed upon utility poles or within public rights-of-way.**

Code of Ordinances, City of Memphis, Tennessee. (Emphasis added).

Municipalities have statutory authority to adopt ordinances on several specific topics and to adopt "any other code which embraces rules and regulations pertinent to a subject which is a proper municipal legislative matter." Tenn. Code Ann. § 6-54-501(1). For example, within certain constitutional constraints, governmental entities may adopt ordinances regulating signage. *See Burson v. Freeman*, 504 U.S. 191, 112 S.Ct. 1846, 119 L.E.2d 5 (1992) (upheld state statute regulating political campaign signs within a certain distance of voting locations). Municipalities may not adopt ordinances that contravene state law. *Manning v. City of Lebanon*, 124 S.W.3d 562, 565 (Tenn. Ct. App. 2003); *see also* 19 Tenn. Jur., *Municipalities*, § 46. So long as it does not contravene state law, an ordinance validly enacted has the force of a law passed by the General Assembly. All persons legally affected by it are bound to take notice. 19 Tenn. Jur., *Municipalities*, § 58.

Because the Memphis ordinance concerns political speech, the ordinance raises the question of whether the ordinance abridges freedom of speech within the meaning of the First Amendment to the United States Constitution. It is well settled that political speech is at the core of the First Amendment and is "entitled to the fullest possible measure of constitutional protection." Consequently, any regulation of non-commercial speech must be content neutral and only regulate the time, place and manner of speech. The regulation must (1) further an important or substantial government interest; (2) be unrelated to the suppression of free expression; and (3) any incidental restriction on First Amendment freedoms should be no greater than necessary to further the important government interest. *See Burson v. Freeman*, 505 U.S. at 196-97; *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 814-15, 104 S.Ct. 2118, 2135, 80 L.Ed.2d 772 (1984); *Hynes v. Metro. Gov't of Nashville*, 667 F.2d 549, 550 (6th Cir.1982).

To say that the application of the Memphis ordinance to political candidates' expressive activities raises First Amendment considerations does not necessarily mean that the ordinance constitutes a First Amendment violation. *See Taxpayers for Vincent*, 466 U.S. at 803-04. In *Taxpayers for Vincent*, the United States Supreme Court upheld an ordinance prohibiting the posting of political signs on public property. 466 U.S. at 807. The Supreme Court discussed several reasons

advanced in support of the ordinance, such as preventing potential safety hazards, preventing interference with the intended use of public property and enhancing the community environment. 466 U.S. at 804-08. The Supreme Court viewed these reasons as appropriate and also found that there were sufficient alternate modes of communication. 466 U.S. at 812.

The Memphis ordinance fits the standards discussed in *Taxpayers for Vincent.* The ordinance's stated purpose addresses the same concerns as those discussed in *Taxpayers for Vincent:* protection and promotion of public health, safety and welfare, prevention of disruptions, obstructions and hazards to vehicular and pedestrian traffic and enhancement of the quality of the environment in residential and nonresidential districts. The Memphis ordinance does not prohibit political campaign signs in areas other than on utility poles and public rights-of-way. Thus, political candidates have many other opportunities to post their campaign signs. The ordinance does not prohibit political signs on private property (assuming the landowner gives permission). Under *Taxpayers for Vincent,* we believe that the Memphis ordinance is valid and enforceable.

To change the Memphis ordinance, one would have to turn to the political process.

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