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Legal Opinion 2014-008

TO: Mayor John Engen, City Council, Bruce Bender, Ginny Merriam, Mike Brady, Scott Hoffman, Chris Odlin, Mike Colyer, Richard Stepper, Ellen Buchanan, Kevin Slovarp, Mary Rehbein, Nikki Rogers

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE: February 12, 2014

RE: Montana state law prohibits pedestrians from standing on a highway width or publicly maintained right-of-way for the purposes of soliciting contributions from occupants of vehicles.

FACTS:

There might be some confusion concerning the legality of pedestrian solicitation of occupants of vehicles upon highway widths of publicly maintained rights of way; since a city ordinance provision addressing such conduct was removed from the current pedestrian ordinances being considered by the city council. However, the reason for the removal was that Montana state law already adequately regulated through prohibition any pedestrian soliciting contributions from occupants of vehicles while the pedestrian is standing on a highway defined as a publicly maintained way.

ISSUE(S):

Does Montana state law prohibit a person standing on a highway for the purpose of soliciting contributions from occupants of a vehicle?

CONCLUSION(S):

Yes, section 61-8-507 MCA provides that a person may not stand on a highway for the purpose of soliciting employment, business or contributions from the occupant of a vehicle unless the solicitation is authorized by the proper jurisdictional authority.

LEGAL DISCUSSION:

Title 61 Montana Code annotated (MCA) is entitled “MOTOR VEHICLES”. Chapter 8 of this title is entitled “TRAFFIC REGULATIONS”. Part 5 of title 61, chapter 8 is entitled “PEDESTRIAN TRAFFIC” and generally establishes Montana state laws pertaining to pedestrians. Section 61-8-507 MCA pertains to solicitations by pedestrians while standing on a highway. This section provides:

“61-8-507. PEDESTRIAN SOLICITING RIDES, BUSINESS OR CONTRIBUTIONS. (1) A person may not stand on a roadway for the purpose of soliciting a ride. (2) A PERSON MAY NOT STAND ON A HIGHWAY FOR THE PURPOSE OF SOLICITING employment, business, or CONTRIBUTIONS FROM THE OCCUPANT OF A VEHICLE unless the solicitation is authorized by the proper jurisdictional authority.” (emphasis added)

Title 61, chapter 8 MCA defines the term “highway” in subsection 61-8-102(2)(g) MCA as meaning:

“(g) ‘Highway’ has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.”

This definition of “highway” includes “ways” dedicated to “public use” and also cross references to a definition of “highway” set forth in section 61-1-101 MCA. Subsection 61-1-101(27) MCA defines the term “highway” as follows:

(27) ‘Highway’ or ‘public highway’ means THE ENTIRE WIDTH BETWEEN THE BOUNDARY LINES OF EVERY PUBLICLY MAINTAINED WAY WHEN ANY PART OF THE PUBLICLY MAINTAINED WAY IS OPEN TO USE OF THE PUBLIC FOR VEHICULAR TRAVEL. (emphasis added)

Generally the term “vehicle” includes a bicycle. The term “vehicle” is defined in subsection 61-1-101(90) MCA as meaning:

(90) (a) ‘Vehicle’ means a device in, upon, or which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks. (b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.”

CONCLUSION(S):

Yes, section 61-8-507 MCA provides that a person may not stand on a highway for the purpose of soliciting employment, business or contributions from the occupant of a vehicle unless the solicitation is authorized by the proper jurisdictional authority.

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/s/ _____
Jim Nugent, City Attorney

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