



Federal Courts Strike Down Anti-Solicitation Policy And Anti-Begging Law

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Michigan law has long criminalized "begging in a public place." The law's stated purposes include promoting safety, regulating the flow of pedestrians and vehicular traffic, and protecting against fraud and duress associated with soliciting funds. For similar reasons, many municipalities have adopted anti-solicitation or anti-panhandling ordinances or other bans or restrictions on public solicitation. Recently, however, a federal court struck down Michigan's anti-begging law, and another federal court struck down an Ohio city's anti-solicitation policy. If your municipality has an anti-solicitation ordinance or anti-begging ordinance, you will want to take note of these decisions. These decisions cast doubt on the enforceability of anti-solicitation and anti-begging policies.

MICHIGAN ANTI-BEGGING LAW STRUCK DOWN

On August 24, 2012, a federal court in Michigan held that Michigan's law criminalizing begging in a public place is unconstitutional. In *Speet v Schuette*, the court first found that the law is "content-based," which normally is the death knell for rules regulating speech. The Court then said that the law was not narrowly tailored to achieve a compelling interest because there were less restrictive means to further the interests underlying the law. As a result, the Court struck down the law as unconstitutional. The court then found a second flaw in the law – it violates equal protection guarantees because it treats begging differently from other kinds of speech.

CITY'S SOLICITATION POLICY STRUCK DOWN

Anti-begging laws are not the only policies that might run afoul of free speech rights. A federal appeals court recently struck down an Ohio city's anti-solicitation policy under the First Amendment. In *Bays v City of Fairborn*, the city's policy barred all solicitation of others outside of a booth. Based on that ordinance, the city prohibited a religious group from distributing literature, displaying signs, and preaching at a community festival outside of a booth, based on its policy that required

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PRACTICE AREAS

Municipal & Public Entity Law



a booth permit for any "solicitation of causes." The policy, as enforced by the city, prohibited even one-on-one solicitations. The court found that this was overboard. Although the policy was content-neutral on its face (e.g., it did not have different rules for different kinds of speech), the restrictions on speech were not "narrowly tailored" to serve the city's interests. So the policy could not be enforced.

Municipalities with anti-begging or anti-solicitation policies or ordinances should review their policies or ordinances with counsel in light of the above decisions. A blanket ban on begging or solicitation will likely be unenforceable in light of the above cases. Even a policy that is "content neutral" on its face may be unconstitutional if the restrictions are too broad – that is, if they are not narrowly tailored to serve the municipalities' needs.

