The State of South Carolina

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The Honorable Carnell Murphy
Chairman, Fairfield County Council
Route 3, Box 331-M
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Dear Mr. Murphy:

You have asked our opinion regarding the constitutional validity of ordinances mandating nocturnal curfews for juveniles. It is our opinion that, so long as such ordinances are not impermissibly vague, such curfews are constitutional.

BACKGROUND

Responding to the recent rash of teenage violence, drug abuse and social and cultural disorder relating to our youth generally, a number of local jurisdictions throughout the United States have enacted juvenile nocturnal curfews. Generally speaking, such curfews forbid juveniles to be on the streets between certain hours except in certain prescribed circumstances, or unless accompanied by a parent or guardian. Likewise, counties and municipalities in South Carolina have adopted, or are considering, such curfews as a means of getting juveniles off the street late at night--usually long after school and other legitimate activities are over. The curfew is also intended to prevent teenagers from coming in contact with adults who might get them in trouble.

Frequently, such curfews have been attacked in the courts. The grounds have ranged from the curfew ordinance being void for vagueness, to its infringement upon First Amendment rights of association or speech, to impairment of the right to travel. Additionally, those who would strike down this type of ordinance argue that it impairs a parent's right to raise a child in the manner chosen.

We reject each and every one of these arguments. Based upon the authorities set forth below, it is our conclusion that a carefully tailored juvenile curfew ordinance impairs

neither a juvenile's or a parent's constitutional rights. To the contrary, such an ordinance serves at least four important and prevailing governmental interests. First, the ordinance protects juveniles from each other and from other persons on the street during late nighttime hours. Secondly, the ordinance protects the public. Third, the ordinance serves to reduce juvenile crime and violence. Fourth, the ordinance reinforces parental control and responsibility for children.

FREEDOM OF ASSOCIATION AND RIGHT TO TRAVEL

Frequently, the argument is made that a juvenile curfew ordinance infringes upon a juvenile's right to gather, travel, walk about or associate. For such a right to rise to constitutional dimension, however, it must be determined to be "fundamental" in nature. A juvenile must, in other words, possess a fundamental right to travel or associate on the street. If fundamental in nature, the courts then invoke a so-called strict scrutiny test--thereby requiring that in order to survive constitutional scrutiny, the statute or ordinance be narrowly drawn to serve compelling governmental interests. Shapiro v. Thompson, 394 U.S. 618, 634, 89 S.Ct. 1322, 1331, 22 L.Ed.2d 600, 615 (1969).

The United States Supreme court has consistently held that interstate travel is indeed a fundamental constitutional right. See, Shapiro, supra; Attorney Gen. of N.Y. v. Soto-Lopez, 476 U.S. 898, 90 L.Ed.2d 899 (1986). As the Court recognized in Soto-Lopez,

> ... in light of the unquestioned historic acceptance of the principle of free interstate migration, and the important role that principle has played in transforming many States into a single Nation, we have not felt impelled to locate this right definitively in any particular constitutional provision.... Whatever its origin, the right to migrate is firmly established and has been repeatedly recognized by our cases.

476 U.S. at 902-903. Moreover, the Court has scrupulously examined vagrancy ordinances, in part, because the freedom to wander about is

> ... historically part of the amenities of life as we have known them ... These unwritten [in the Constitution] amenities have been in part responsible for giving our people the feeling of independence and self-confidence, the feeling of creativity. These amenities have dignified the right of dissent and have honored the right to be nonconformists and the right to defy submissiveness. They have encouraged lives of high spirits

> rather than hushed suffocating silence. Papachristou v. City of Jacksonville, 405 U.S. 156, 164, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972).

On the other hand, a juvenile's right to wander or associate on the street late at night is a far different matter. Only recently, in Dallas v. Stanglin, 490 U.S. 19, 109 S.Ct. 1591, 104 L.Ed.2d 18, the United States Supreme Court upheld an ordinance restricting admission to certain dance halls to persons between 14 and 18. The Court rejected the argument that older teenagers and adults possessed a fundamental right of association infringed by the ordinance.

Distinguishing earlier cases, which had upheld the first and fourteenth right of association in other contexts such as private clubs, the Court held that the right of association did not extend to protect a juvenile's desire to roam the streets. Said the Court,

> [i]t is possible to find some kernel of expression in almost every activity a person undertakes--for example, walking down the street or meeting one's friends at a shopping mall--but such a kernel is not sufficient to bring the activity within the protection of the First Amendment. We think the activity of these dance-hall patrons--coming together to engage in recreational dancing--is not protected by the First Amendment. Thus, this activity qualifies neither as a form of "intimate association" nor as a form of "expressive association"....

490 U.S. at 25. The Constitution does not recognize, concluded the Court, a "generalized right of 'social association' that includes chance encounters in dance halls." Id.

Moreover, quoting the previous decision in Prince v. Massachusetts, 321 U.S. 158, 168-169, 64 S.Ct. 438, 88 L.Ed.2d 645 (1944), the Court noted that "[t]he state's authority over children's activities is broader than our like actions of adults." 490 U.S. at 27, n. 4. See also, Bellotti v. Baird, 443 U.S. 622, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979). Finding no fundamental constitutional right, the proper legal test is simply whether the ordinance is rationally related to a legitimate purpose, "the most relaxed and tolerant form of judicial scrutiny under the Equal Protection Clause." 490 U.S. at 26. The Court concluded that it is rational, and thus constitutional, for the city to seek to avoid the potential corrupting influences on juveniles to frequent a dance hall with older persons unaccompanied by their parents.

The Stanglin decision has been deemed controlling by other courts when considering the constitutionality of juvenile curfew ordinances. For example, in City of Panora v. Simmons, 445 N.W.2d 363 (Iowa 1989), the Supreme Court of Iowa upheld a curfew, relying in part upon Stanglin and upon Bellotti v. Baird, supra, cited by the Court in Stanglin. Simmons rejected the holding of Waters v. Barry, 711 F.Supp. 1125 (D.C. 1989), which had held that a juvenile curfew violated the constitutional right to travel. While acknowledging that the right to travel is clear in certain cases, the Court in Simmons found no such right in the case of juvenile curfews.

> ... [A] minor's right of intracity travel is not a fundamental right for due process purposes, and the ordinance need not meet a strict scrutiny test. Rather, we need to determine only whether there is a rational relationship between the goals of the ordinance and the means chosen. We believe there is. In weighing the minor's interest in intracity travel against the City's interest in providing a prophylactic solution to the perceived problems inherent in unrestricted minor travel, we believe that the ordinance is a reasonable exercise of the City's power to legislate for the good of the citizens.
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> In reaching a contrary result, we believe the federal district court in Waters erred in the application of the Bellotti rationale. Waters found that the "peculiar vulnerability" of children was not a sufficient reason for establishing a juvenile curfew law, stating that "it is obvious that the plague afflicting the District ... poses no peculiar danger to children." Waters, 711 F.Supp. at 1137. ... [I]t is common knowledge[, however,] that drug use among minors has reached epidemic dimensions.
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> The United States Supreme Court in a recent case recognized this and upheld a city ordinance which prohibited intermingling of minors with adults in dance establishments. In doing so, the Court cited Bellotti and noted the peculiar vulnerability of youngsters to drug usage and sexual contact. City of Dallas v. Stanglin ... [citation omitted].
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> In summary, we believe the ordinance in question is a legitimate exercise of Panora's powers designed to protect the safety and welfare of its children and any restriction on a minor's intracity travel is not significant to create a constitutional problem.

445 N.W.2d at 369.

Simmons also rejected the notion that the juvenile curfew ordinance interfered with a parent's right to raise a child. Citing Bykofsky v. Borough of Middletown, 405 F.Supp. 1242 (M.D. Pa. 1975), aff'd, 535 F.2d 1245 (3d Cir. 1976), cert. den. 429 U.S. 964, 97 S.Ct. 394, 50 L.Ed.2d 333 (1976), the Court suggested that the curfew might even reinforce parental responsibility.

> In the present case, the City has a strong interest in protecting minors form the national epidemic of drugs, and the curfew ordinance is a minimal infringement upon a parent's right to bring up his or her child. In effect, the Panora curfew ordinance acts to make parents the primary agent of enforcement. In addition, it could be said "to promote family life by encouraging children to be at home." ... [citation omitted]. As the Bykofsky court stated:
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> > The ordinance does not dictate to the parent an over-all plan of discipline for the minor. With its numerous exceptions, including the one that permits the juvenile to be on the streets during the curfew hours if accompanied by a parent, the ordinance constitutes a minimal interference in influencing and controlling the activities of their offspring....
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> It is difficult, when judging Panora's ordinance, to determine if it forces parents to abdicate their authority over their children, or to accept such authority. In either case, the City's interference is minimal and its interests significant.

445 N.W.2d at 370.

Other courts have upheld juvenile curfew ordinances or statutes utilizing a similar analysis. See, Village of Deerfield v. Greenberg, 550 N.E.2d 12 (Ill. App. 2 Dist. 1990); People v. Chambers, 360 N.E.2d 55 (Ill. 1975) [state statute imposing a juvenile curfew]; People In Interest of J.M., 768 P.2d 219 (Colo. 1989); City of Milwaukee v. K.F., 426 N.W.2d 329 (Wis. 1988). In J.M., the Court set forth the following reasoning for upholding the ordinance:

> We believe that a child's liberty interest in being on the streets after 10:00 o'clock at night is not co-extensive with that of an adult. The three factors enumerated in Bellotti are all present in this case. Youths abroad at night are more vulnerable to crime and peer pressure than their adult counterparts. Similarly, a child's immaturity may lead to a decision to commit delinquent acts, such as vandalism, drug or alcohol use, or crimes of violence. Although adults may also make these decisions, they are more likely to do so in an informed and mature manner.... Courts have recognized that, during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment to recognize and avoid choices that could be detrimental to them.... Finally, controlling a minor's freedom of movement after 10:00 p.m. reinforces parental authority and encourages parents to take an active role in supervising their children.

768 P.2d at 223. Since there is no fundamental right involved, the State need only establish a "rational relation between the means employed and the goals to be obtained. At least four legitimate state interests were deemed to be served by the ordinance, according to J.M.: (1) the protection of children from each other and other persons on the street during nighttime hours; (2) protection of the public from nocturnal mischief by minors; (3) reduction of juvenile criminal activity; and (4) the enforcement of parental control and responsibility.

Even if we assume, arguendo, that a juvenile curfew ordinance invokes a fundamental right, there is authority that the ordinance would be constitutional. A recent federal decision of the Fifth Circuit Court of Appeals upheld the constitutional validity of a curfew ordinance, even though a juvenile's fundamental liberty interest is at stake. In QUTB v. Strauss, 11 F.3d (5th Cir. 1993), the Court found that the State possesses a compelling interest in reducing "juvenile crime and victimization, while promoting juvenile safety and well-being." 11 F.3d at 493. The Court recognized the following statistical data regarding juvenile crime:

1. Juvenile crime increases proportionally with age between ten years old and sixteen years old.

2. The number of juvenile arrests are rising, and the number of murders, sex offenses, robberies and aggravated assaults committed by juveniles are sharply increasing.

3. Murders are most likely to occur between 10:00 p.m. and 1:00 a.m. and most likely to occur in apartments and apartment parking lots and streets and highways.

4. Rapes are most likely to occur between 1:00 a.m. and 3:00 a.m. and many rapes occur on public streets and highways.

5. Almost 1/3 of robberies occur on streets and highways.

The Court did not feel it necessary for the city of Dallas to establish a precise correlation supporting the nocturnal juvenile crime problem, because the juvenile crime problem generally is a compelling State interest. Moreover, the ordinance was sufficiently tailored even to overcome the strict scrutiny standard.

> With the ordinance before us today, the city of Dallas has created a nocturnal juvenile curfew that satisfies strict scrutiny. By including the defenses to a violation of the ordinance, the city has enacted a narrowly drawn ordinance that allows the city to meet its stated goals while respecting the rights of the affected minors. As the city points out, a juvenile may move about freely in Dallas if accompanied by a parent or guardian, or a person at least eighteen years of age who is authorized by a parent or guardian to have custody of the minor. If the juvenile is traveling interstate, return from a school-sponsored function, a civic organization-sponsored function, or a religious function, or going home after work, the ordinance does not apply. If the juvenile is involved in an emergency, the ordinance does not apply. If the juvenile is on a sidewalk in front of his or her home or the home of a neighbor, the ordinance does not apply. Most notably, if the juvenile is exercising his or her First Amendment rights, the curfew ordinances does not apply.

11 F.3d at 494. Thus, even assuming that juveniles possess a fundamental right to be on the streets late at night--most courts reject the existence of such a right--there still exists a compelling governmental interest in the enforcement of juvenile curfew.[1]

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[1] Of course, we recognize that there is authority to the contrary. See Waters v. (continued...)

VAGUENESS

Of course, any curfew ordinance adopted by a county or municipality must not be void for vagueness. The United States Supreme Court has written in this regard, that

> [i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who provide them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms," it "operates to hinder the exercise of [those] freedoms." Uncertain meanings inevitably lead citizens to "'steer for wider of the unlawful zone' ... than if the boundaries of the forbidden areas were clearly marked."

Grayned v. City of Rockford, 408 U.S. 104, 108-109, 92 S.Ct. 2294, 2298-99, 33 L.Ed.2d 222, 227-28 (1972). However, it is also well recognized that if a statute does not reach a "substantial amount of constitutionally protected conduct" and is not impermissibly vague in all its applications, a person lacks standing to challenge the statute or ordinance

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[1](...continued)
Barry, supra; Johnson v. City of Opelousas, 658 F.2d 1065 (5th Cir. 1981). See also, Note, "Assessing the Scope of Minors' Fundamental Rights: Juvenile Curfews and Constitution," 97 Harvard Law Review 1163 (1984). In a letter dated May 4, 1984, this Office reviewed the pertinent authority. However, in Stanglin, the United States Supreme Court severely undercut the earlier cases. Moreover, QUTB v. Strauss, supra is a Fifth Circuit case which distinguishes Opelousas, an earlier Fifth Circuit decision. 11 F.3d at 494. While obviously it can be argued that a curfew ordinance would fall based on these earlier decisions, we think the better view would be to sustain the ordinance if drafted properly.

on vagueness grounds. Hoffman Estates v. Flipside, Hoffman Estates, 455 U.S. 489, 494-95, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982). As discussed above, most courts have concluded that there is little, if any, constitutionally protected conduct involved in the typical situation where a juvenile is simply out on the street at night.

In most of the cases cited, the issue of vagueness was decided on the basis that the plaintiff lacked standing or on some other procedural ground. However, vagueness is not considered by the county to be a particularly troubling problem so long as the "basics" are included in the ordinance. It is clear from a review of these authorities that virtually all of the statutes or ordinances are generally similar. Therefore, the following criteria are offered not so much from the standpoint that such must be contained in a particular ordinance, but to demonstrate the general similarities of such ordinances around the country:

1. Specific hours for the curfew are set by the ordinance, usually from 10:00 p.m. to 5:00 a.m.

2. A specific age for violation is given, usually the ordinance affects persons under the age of 17 or 18 (probably depending on that particular state law).

3. The ordinance usually prohibits being on public streets, in public buildings, and also often covers alleys, playgrounds, places of business or amusement. Many times, the term "public place" is specifically defined.

4. The ordinance contains specific exceptions--the most common being that, if a juvenile is accompanied by a parent, guardian or other person charged with the case and custody of the minor, no violation occurs.

5. Some ordinances contain other exceptions such as where the minor is traveling between his home or place of residence and the place where any approved place of employment, church, municipal or school function is being held. Other exceptions sometimes used are the allowance for a juvenile to engage in interstate travel or to remain on a sidewalk in front of the minor's home.

6. Punishments vary. Some impose a small fine, others impose no sanction other than that the minor must be returned home or back to the parent or guardian or person charged with the minor's care or custody.

CONCLUSION

1. Juvenile crime and violence is rampaging, wrecking families and ruining futures. According to SLED and other statistics, the number of violent crimes committed by juveniles increased almost 150% between 1988 and 1992.

2. The public has "a strong and legitimate interest in the welfare of its young [people]...." Their "immaturity, inexperience and lack of judgment may sometimes impair their ability to exercise their rights [and responsibilities] wisely." Hodgson v. Minnesota, 497 U.S. 417, 444, 110 S.Ct. 2926, 2942, 111 L.Ed.2d 344 (1990).

3. A juvenile curfew ordinance, properly drafted, serves at least 4 substantial and prevailing governmental interests. The ordinance protects juveniles from each other and from persons on the street during late nighttime hours. Secondly, the ordinance protects the public. Third, the ordinance serves to reduce crime and violence. Finally, the ordinance reinforces parental control of and responsibility for children.

4. We agree with courts that have so held that the interests of safety, security and responsibility are paramount to any right of a juvenile to be out on the street late at night. We agree also with the Fifth Circuit that such governmental interests are compelling.

5. We believe a juvenile curfew ordinance, properly drafted, and containing reasonable exceptions--such as the accompaniment by a parent or guardian does not violate either a minor's or a parent's constitutional rights.

6. We refer municipal and county attorneys to the cases cited in this opinion for the drafting of a juvenile curfew ordinance. Virtually all of the ordinances which have been upheld have been quoted in the cases and are a good guide for municipalities and counties who may wish to enact such an ordinance.

Sincerely yours,

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Attorney General

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