

DATE: August 29, 1985

TO: Citizen's Assistance and Information Director
George Story

FROM: City Attorney

SUBJECT: Delivery of Commercial Newspapers to Homes

By memorandum dated July 25 1985, you asked for a review of a March 25, 1976 Memorandum of Law issued by this office concerning the delivery of commercial newspapers to homes. You indicated that your request was based on recent questions from two Councilmembers concerning the possible regulation of door-to-door distribution of unsolicited advertising material to homes in order to reduce burglaries.

This office's original conclusion, based on the state of the law in 1976, was that the City could regulate the door-to-door distribution of purely commercial materials to homes because purely commercial matter was not protected by the First Amendment, but that no viable means of regulation was available.

Since that time, the United States Supreme Court has extended the protection of the First Amendment, under certain conditions, to purely commercial speech. This has further restricted The City of San Diego's authority to regulate the above described activity. We conclude, therefore, that there are still no viable means of regulating this activity for the reasons described below.

In *Central Hudson Gas and Electric Corp. v. Public Service Comm'n*, 447 U.S. 557, 65 L.Ed.2d 341, 100 S.Ct. 2343 (1980) the United States Supreme Court developed a four-part test for determining the validity of governmental restrictions on purely commercial speech. The following year in *Metromedia Inc. v. San Diego*, 453 U.S. 490, 69 L.Ed.2d 880, 101 S.Ct. 2882 (1981) the Court concisely restated that test as follows:

(1) The First Amendment protects commercial speech only if that speech concerns lawful activity and is not misleading. A restriction on otherwise protected commercial speech is valid only if it (2) seeks to implement a substantial governmental interest, (3) directly advances that interest, and (4) reaches no

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further than necessary to accomplish the given objective.

It would be extremely difficult to draft an ordinance which can pass the above test and still effectively solve the described problem. Even if the City banned the door-to-door distribution of purely commercial matter, the mere insertion into the material of a few items of consumer or community information would change the nature of the advertising material into more fully protected speech which the City may not regulate under any circumstances. *Ad World., Inc. v. Township of Doylestown*, 672 F.2d 1136 (1982) cert. denied 456 U.S. 975, 72 L.Ed.2d 850, 102 S.Ct. 2240 (1982). Distributors would of course take advantage of this large loophole.

It may be of interest to note that the purpose of the Doylestown ordinance which banned door-to-door delivery of commercial newspapers was to prevent burglars from noticing the accumulation of such material at vacant homes. In striking down that ordinance, the majority of the court stated that the onus was on the homeowner to solve that problem, not the distributors. They also indicated that if the Township desired to rectify this problem it should enforce other laws such as trespassing which do not infringe on the First Amendment.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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