

April 6, 2009

Douglas xxxxxx, Esq.  
City of West Palm Beach  
xxxxxxx  
4<sup>th</sup> Floor  
West Palm Beach, Fl. 33401

Re: Unconstitutional Youth Curfew

Dear Doug:

I have been retained to represent Jeffrey Nadel, Zachary Goodman and the National Youth Rights Association of Southeast Florida in the above-referenced matter. My clients have provided me a copy of the City of West Palm Beach Ordinance that seeks to place a curfew upon young people in its municipality at certain times. They have also shared with me their impressive body of case law which they provided to the City Commissioners and Mayor Frankel indicating the unconstitutional nature of this law. As in the case with the ordinance seeking to ban the feeding of the homeless in public parks, this ordinance also seems destined to reside in the scrap heap of history. If possible, this ordinance is even more vaguely written and more problematic than the last one.

For example, the ordinance applies to those under 18 but not if they are married. Is there any rational basis for treating those who decide to marry before the age of 18 as more responsible than their peers who postpone this important decision? The ordinance seeks to subject a parent to a fine if they “knowingly permits or by insufficient control allows, the minor to enter or remain in any public place or on the premises of any establishment within the downtown area during curfew hours.” If a parent does not have custody on a particular night of their child, are they liable if the child is found in the curfew area? What if the child says he’s going to a friend’s house, is the parent liable if the child goes with the friend to WPB during curfew hours. Moreover, this part of the ordinance does not contain the exceptions referred to in the later part, so presumably if the child was covered by one of the exceptions, they parent would still be liable for violating the ordinance.

More importantly, the ordinance contains the following exception, “Attending or traveling directly to or from an activity that involves the exercise of rights protected under the First Amendment of the United States Constitution.” These rights include freedom of speech, freedom of religion and freedom of association.

These rights are implicated in any type of activity one can imagine in the downtown area, since minors in the curfew area will engage in speech and seek to associate with whomever they choose. Thus the exception swallows the rule, and it is not possible to determine from the ordinance what First Amendment rights are contemplated by the Ordinance as exceptions. Without such knowledge, it is impossible to know in advance whether the City of West Palm Beach will deem their activities to be protected by the First Amendment, although an objective, informed citizen would believe that any anticipated behavior in the curfew area would be covered by the First Amendment.

It is respectfully suggested that if the City of West Palm Beach is concerned about the effects of our youth in the downtown area, it should work with my clients, not against them, to determine the best way to deter and reduce the incidence of youth crime. My clients are very well educated, very well informed and reach out to many of our youth. Accordingly, you would be well served to work with them in any future efforts to deal with the youth of our county. In addition, the legal authority cited by my clients is very compelling in this case, and you the City would be well served to consult with them about the legality of any future ordinances you are considering in the City of West Palm Beach.

We will provide 10 days for the City to rescind the ordinance, or if this cannot be done in time, to assure us that the ordinance will be rescinded. If you decide to voluntarily rescind the ordinance within this time, we shall not seek attorney's fees. However, should we not hear from you within this time, you will leave my clients no alternative but to avail themselves of all legal remedies, including a law suit for injunctive relief, damages, costs, attorney's fees, and other appropriate remedies. I look forward to hearing from you.

Best Regards,

Barry Silver