



People's Law Resource Center

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May 20, 2005

Charles Ramsey
Chief of the Metropolitan Police Department
300 Indiana Avenue, NW
Washington, DC 20001

Robert J. Spagnoletti
Attorney General of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 409
Washington, DC 20004

Terrence Ryan
General Counsel of the Metropolitan Police Department
300 Indiana Ave., NW
Room 4115
Washington, DC 20001

via facsimile and first class mail

Dear Chief Ramsey and Messrs. Spagnoletti and Ryan:

I am writing in hopes of resolving a troubling matter that infringes upon the rights of Street Sense and its writers, publishers and distributors.

Street Sense, Inc. publishes a monthly newspaper (*Street Sense*) that is distributed on the public sidewalks. The newspaper represents both an important source of news and analysis concerning poverty and homelessness in this community and a source of income for homeless people who distribute the paper.

This office has been advised that distributors of *Street Sense* report being harassed by MPD officers. Some have been told that they may not sell the paper without a license, and they have been ordered to "move on." This has occurred with sufficient frequency and commonality to suggest that the officers may be operating under a common understanding and set of practices, and have been inadequately trained and instructed.

There is no lawful basis for requiring distributors of *Street Sense* to obtain a license in order to sell the publication from the public sidewalks, and interference with distribution of this newspaper is in violation of their rights and the rights of Street Sense, Inc., including under the First Amendment.

The District of Columbia licensing law specifically carves out an exception for selling newspapers from the public sidewalks of this city, among a few other exceptions. By the express terms of the Code, a license is required to sell items in public places, “[e]xcept to sell newspapers sold at large and not sold from a fixed location” D.C. Code § 47-2834.

It is well settled that selling newspapers from a stationary location, even when returning to the same location frequently, does not constitute sale “from a fixed location.” Moreover, the sale of newspapers in public fora is constitutionally protected activity.

A generation ago, a similar issue arose with regard to the *Washington Free Press* and *Tasty Comix*, which was once a supplement to that paper and later a stand-alone publication. See *Washington Free Community, Inc. v. Wilson*, 484 F.2d 1078 (D.C. Cir. 1973), *aff’d* 334 F. Supp. 77 (D.D.C. 1971); *OD v. Wilson*, 323 F. Supp. 76 (D.D.C. 1971). In *OD*, the Court ordered:

1. [The MPD is] hereby enjoined from arresting or otherwise interfering with any vendor of the publication entitled "*Tasty Comix*" for failure to have a vendor's license as required by 47 D.C. Code § 2336 while selling or distributing said publication on the public streets or in public places at other than fixed locations; and
2. Promptly upon receipt of this Order, defendant [Police Chief] Wilson is directed to formulate in writing and to distribute to all District and Precinct Commanders for further dissemination to all officers and employees of the Metropolitan Police Department the fact and nature of this Permanent Injunction.

OD, 323 F. Supp. at 78-79 (footnote omitted).

In *Washington Free Community*, the City avoided an injunction to prohibit it from harassing distributors of that “self-styled bi-weekly ‘underground’ newspaper,” *id.* at 1079, by “revers[ing] departmental policy *vis-à-vis* underground newspaper vendors,” *id.* at 1084 (quoting *id.*, 334 F. Supp. at 80). Specifically, MPD circulated a memorandum to the police force that instructed:

The Corporation Counsel has issued the opinion "that a vendor who stacks his newspapers on the sidewalk without the benefit of any physical accouterments other than the newspapers themselves is not selling newspapers from a 'fixed location' within the meaning of Section 47-2336, D.C. Code, 1967 ed. This is true despite the fact that the vendor may frequently be found selling newspapers from the same location. Accordingly, the vendor may sell his newspapers without first obtaining a license."

Id. at 84 (Appendix B, reprinting the Memorandum).

Accordingly, there can be no doubt that *Street Sense* vendors have every right to sell this newspaper from the public sidewalks, without obtaining a permit, and without fear of harassment by MPD officers.

News of harassment and orders to “move on” has a chilling effect on *Street Sense* vendors and Street Sense, Inc. They suffer lost earnings and violations of their Constitutional rights. It is critical that this matter be resolved promptly.

We are hopeful that you will circulate a similar memorandum, providing us with a copy, and that this matter may be resolved without need for litigation. Please advise before close of business on Tuesday, May 24, what steps you intend to take to ensure that the force understands and respects the rights of *Street Sense* vendors to sell this newspaper in public places without a permit.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Zachary Wolfe". The signature is written in a cursive, flowing style.

Zachary Wolfe, Esq.

TRANSMISSION VERIFICATION REPORT

TIME : 05/20/2005 09:55
NAME : PEOPLE'S LAW RES CTR
FAX : 2022506712
TEL : 2022655965
SER.# : BROL2J814417

DATE, TIME 05/20 09:54
FAX NO./NAME 7279524
DURATION 00:01:15
PAGE(S) 04
RESULT OK
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facsimile transmittal cover sheet

To: Chief Charles H. Ramsey Fax: 202-727-9524

From: Zachary Wolfe Date: 5/20/2005

Re: *Street Sense* Pages: 4, including cover

Urgent As Discussed

The attached will will not
follow in the mail.

Notes:

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TIME : 05/20/2005 10:00
NAME : PEOPLE'S LAW RES CTR
FAX : 2022506712
TEL : 2022655965
SER.# : BROL2J814417

DATE, TIME 05/20 09:59
FAX NO./NAME 3478922
DURATION 00:01:08
PAGE(S) 04
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To: Robert J. Spagnoletti Fax: 202-347-8922

From: Zachary Wolfe Date: 5/20/2005

Re: *Street Sense* Pages: 4, including cover

Urgent As Discussed

The attached will will not
follow in the mail.

Notes:

TRANSMISSION VERIFICATION REPORT

TIME : 05/20/2005 09:57
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TEL : 2022655965
SER.# : BR0L2J814417

DATE, TIME 05/20 09:56
FAX NO./NAME 7273308
DURATION 00:01:09
PAGE(S) 04
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facsimile transmittal cover sheet

To: Terrence Ryan **Fax:** 202-727-3308
From: Zachary Wolfe **Date:** 5/20/2005
Re: *Street Sense* **Pages:** 4, including cover

Urgent As Discussed

The attached will will not
follow in the mail.

Notes: