



CITY OF CAMBRIDGE

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February 3, 1994

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Placement of Commercial Advertising on Car Windows

Dear Mr. Healy:

In a letter dated December 16, 1993 (copy attached), City Councillor Francis Duehay asked about the legality of a business in Harvard Square placing advertisements on parked cars. The practice is illegal. Massachusetts General Laws, Chapter 266, section 126 provides in pertinent part:

Whoever...in any manner affixes to any...object which is...the property of another, whether within or without the limits of the highway, any...advertisement or notice which is not required by law to be posted thereon, without first obtaining the written consent of...the owner...of such property, shall, upon complaint of such...owner...be punished by a fine of not less than ten nor more than one hundred dollars....

Although automobiles are not specifically mentioned in this statute, they appear to be included within the language "any object which is the property of another, whether within or without the limits of the highway." Generally, state laws are enforced by the Police Department and the District Attorney's office.

Code of Ordinance §9.04.050 is similar to G.L.c.266, s.126.

It provides that:

A. No person shall post or attach, or directly or indirectly cause to be posted or attached in any manner, any handbill, poster, advertisement or notice of any kind...on private property without the consent of the owner or occupant thereof....

C. The person or persons responsible for causing the unlawful posting of any notice described herein will be liable for the cost of removal and for the penalties described below.

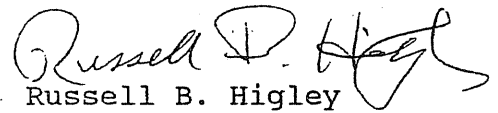
The penalties described in paragraphs D. and E. are \$300 per illegal advertisement, or if punished by noncriminal ticketing, \$25 for the first violation, \$100 for the second violation, and \$200 for the third and all subsequent violations. Again, automobiles are not specifically mentioned, but could be included within the term "private property."

The primary legal issue raised by laws restricting the distribution of advertisements is the free speech guarantee of the First Amendment to the U.S. Constitution. Commercial speech, such as advertising, is protected by the First Amendment. John Donnelly & Sons, Inc. v. Outdoor Advertising Board, 369 Mass. 206 (1975). However, commercial speech may be limited by reasonable time, place, and manner restrictions that further a significant governmental interest. Massachusetts Fair Share, Inc. v. Town of Rockland, 610 F.Supp. 682 (1985). If a reasonable advertising restriction does not affect speech based on its content, if it is narrowly drawn, and alternative means of communication are available, the restriction is likely to be valid. "For example, an ordinance that prohibits the placing of handbills in any

automobile, yard, or porch without the consent of the owner may be valid." 7 McQuillin, Municipal Corporations, §24.393.

Please contact me if I can be of further assistance.

Very truly yours,


Russell B. Higley

cc. Councillor Francis Duehay

Note 1

ments by amendments. Com. v. S.S. Keese Co. (1929) 166 N.E. 558, 267 Mass. 146.

2. Deceased or incapacitated optometrists

Optometrist who maintained a principal optometry office and a branch office at his personal residence could be engaged by deceased optometrist's widow to conduct her late husband's practice on a part-time basis despite rule of board of registration in optometry that an optometrist shall not establish an office other than his principal office, except for a branch office approved by board and located in his personal residence. Op.Atty.Gen., March 12, 1974, p. 114.

3. Opticians

Fitting of contact lenses to the human eye constitutes the practice of optometry and is therefore bar to opticians by statute. Op.Atty.Gen., June 9, 1965, p. 308.

4. Physicians and surgeons

In the case Sachs v. Board of Registration in Medicine (1939) 15 N.E.2d 473, 300 Mass. 426, the court said: "It is difficult to believe that the Legislature regarded optometry, carefully defined in this statute, as a part of the practice of medicine under previous statutes, when in authorizing persons to practise optometry the Legislature itself declared that it did not authorize them to practise medicine 'in any sense.' The exception of physicians from the operation of the new act would seem to have been due, not to the belief that 'optometry' as

there defined was 'medicine,' but to the belief that there was no necessary relation between practicing qualified physicians who practice the field of optometry."

In the case of Molinaro v. Commonwealth (10 N.E.2d 136, 298 Mass. 363, 1943) the court said: "One exception relates to the practice of an optometric practice by the registered spouse of a registered practitioner, Section 73. Another is that the registered person shall not prevent the employment of a person of a registered optometrist in the department of optometry by such person, Section 73. The servant employed in the case did not come within that exception. He was a physician, not a registered optometrist. It is true that a physician may practise optometry, Section 73. But when it comes to practising optometry as the servant of a layman or a corporation, the Legislature may rationally have thought that a physician who would accept employment in an optical department would not be engaged in a narrow field of optometry. A corporation could bring himself within the exception by obtaining registration as an optometrist, Section 73. We think upon the agreed facts the defendant is practising optometry without right. A registered physician may practise optometry without being examined or licensed as an optometrist or subject to the provisions applicable to others who practise optometry. Op.Atty.Gen., Feb. 10, 1967, p. 37.

§ 73A. Advertising restrictions; violations; penalties

Persons may advertise the sale price of eyeglasses, contact lenses, eyeglass frames provided they shall not include in any newspaper, radio display sign or other advertisements any statement of a character tending to deceive or mislead the public, or, any statement which in any way misrepresents any material or service or credit terms, or any statement containing the words "free examination of eyes", "free service", "free consultation", "consultation without obligation", or any other words or phrases of similar import which convey the impression that eyes are examined free. Any advertisement offering contact lenses, eyeglasses, or eyeglass frames at a fixed price shall include a statement which indicates that said price does not include eye examination or professional services. Such statement shall indicate whether said price includes lens and, if so, the type of lens, single vision, bi-focal or tri-focal and the strength thereof, low, medium or high.

Whoever violates any provision of this section shall be punished for a first offense by a fine of not less than fifty dollars nor more than

three months, or by imprisonment for not more than three months, or both, and for a subsequent offense by a fine of not less than two hundred dollars nor more than five hundred dollars or by imprisonment for not less than three nor more than six months, or both.

Amended by St.1937, c. 287, § 1. Amended by St.1976, c. 91.

Historical Note

St.1976, c. 287, § 1 was approved May 11, 1976, and by § 2 made effective Jan. 1, 1976. c. 91, deleted "No person, in connection with the sale of eye glasses, lenses or eye glass frames, shall and inserted thereon may advertise the sale price of eyeglasses, contact lenses or eyeglass frames provided they shall not" at the beginning of the first sentence, deleted the last phrases of the first sentence, which read: "or any statement advertising any price for eyeglasses, contact lenses or eyeglass frames, or any statement advertising as described truthfully in all its components, parts, or any statement advertising the sale price of eyeglasses, contact lenses or eyeglass frames, or complete eye glasses including lenses at a fixed price, either alone or in connection with professional services, or any statement advertising a frame or lenses at a fixed price unless a further statement to the effect that said price is for the frame or mounting only and does not include lenses, eye examination or professional services, is included in said advertisement, orally in case of radio advertisement and, if the advertisement is written or printed, in words or print as legible and not less than one half the size of the words or print used for said price, or any statement which lays claim to a policy or continuing practice of generally underselling competitors, or any statement which inaccuracy, terms, policies or services of any competitor", deleted the former second sentence which read: "A price shall be construed as being fixed within the meaning of this section, although the words 'and up or as low as' or words of similar import are used in connection therewith", and set out the third sentence as the present second paragraph.

Cross References

St.1976, c. 91, was approved April 30, 1976. Emergency declaration by the Governor was filed May 3, 1976.

Library References

Regulation of medical devices, see M.P.S. vol. 36, Alperin and Chase, § 333.

United States Supreme Court 1979, 99 S.Ct. 887, 440 U.S. 1, 59 L.Ed.2d 100.

Optometry, board membership, practice and trade name, see Friedman v. Rogers, 1979, 99 S.Ct. 887, 440 U.S. 1, 59 L.Ed.2d 100.

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