



**Village Attorney's Office**

Raymond J. Pollen  
William P. Dineen

**MEMORANDUM**

January 25, 2005

**TO:** M. Chris Swartz, Village Manager (via email)

**CC:** Kathleen Greig, Village Clerk and David Banaszynski, Police Chief  
Leeann Butschlick, Assistant to Village Manager

**FROM:** Raymond Pollen

**RE:** Campaign Signs and Handbills

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As a follow-up to my January 5, 2005 memo, you have requested the preparation of a draft ordinance to repeal portions of the Shorewood Code currently placing restrictions on campaign signs and the placement of handbills on vehicles. Consistent with that request, I propose the attached ordinance. After your review with village staff and on your approval, I believe that the attached is in a form which may go to the Village Board. You may consider, at that time, to provide them with a copy of my January 5<sup>th</sup> memo and its attachments since these may answer a number of questions as to why these sections may be repealed at this time.



**Village Attorney's Office**

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VILLAGE OF SHOREWOOD  
MANAGER'S OFFICE

**MEMORANDUM**

January 5, 2005

**TO:** M. Chris Swartz, Village Manager  
**CC:** Kathleen Greig, Village Clerk and David Banaszynski, Police Chief  
**FROM:** Raymond Pollen  
**RE:** Sign Code and Handbill Code

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I wanted to summarize discussion that I have had on these topics with Village staff over these past few months. Specifically, recent case law has had an impact upon Shorewood's current laws regarding campaign signs and the distribution of handbills.

**Sign Code**

The current Shorewood Building Code includes a provision within §9-419 (K) which allows election campaign signs but places restrictions on them in terms of size and time periods within which they are allowed to be posted. (attached) The Federal District Court struck down time limitations placed upon the erection of campaign signs in *Fiedorowicz vs. City of Milwaukee* (decided April 9, 2004)-attached. Fiedorowicz is one of many recent decisions which has addressed this issue. (see Associated Press article dated 9/20/04 and the article from the Municipality in October 2004-both attached) Although the Shorewood ordinance primarily incorporates standards contained within the Wisconsin Statutes, I think those provisions may come into question given recent Federal Case Law. Moreover, the challenges have not been limited to time limitations but

also size limitations that have been imposed by local municipalities. I had advised that active enforcement of the election campaign sign code should be stayed pending a full review. I understand that the State of Wisconsin has undertaken a comprehensive review on this topic to amend its own rules through the Department of Transportation for Wisconsin roads and highways. I had hoped to have a report from the Wisconsin DOT with specific recommendations on potential changes. However, that review has not yielded any final report. (see attached)

At the present time, the Village's options include a simple repeal of §9-419 (K) or the redrafting of its provisions to make it consistent with current law and surrounding communities. In this regard, it would be helpful to have current information on what other communities are doing on this topic and specifically the content of any ordinances or proposed ordinances which may deal with the topic.

#### **Distribution of Handbills**

At the present time, the Village has various ordinances which address the distribution of commercial and non-commercial handbills. (see 13-710 through 13-715 – attached). Recent case law has put the enforceability of these ordinances into question. In *Deida vs. City of Milwaukee* 206 F. Supp. 2d 967 (E.D. Wis. 2002); 192 F. Supp. 2d 899 (E.D. Wis. 2002) – both attached. As is true with the Shorewood ordinance, the Milwaukee city ordinance at issue in the *Deida* case prohibiting the placement of pamphlets and handbills had its origins in Wisconsin law. (see §346.94 (4) – attached) Although not expressly stated, we can presume that similar restrictions on the placement of handbills on a premises may also be called into question by the Constitution. However, there still remains Constitutional authority which would allow an ordinance to restrict such distribution where a landowner has chosen to post his or her property with "no solicitation"

signs. See for example *Watchtower vs. Village of Stratton*, United States Supreme Court decision in 2002 [synopsis attached].

As with the political sign ordinance, we have made the recommendation that enforcement on these handbill distribution ordinances being stayed until a review can be completed to determine whether all or parts of them should be repealed or rewritten. A consensus from other communities on their efforts in these areas might be helpful as would a sampling of current ordinances or proposed ordinances.

After you have reviewed these materials, it may be helpful to have a brief meeting to discuss how you would like us to proceed.

## ORDINANCE NO:

## An Ordinance Regarding Campaign Signs and Handbills

At a regular meeting of the Village Board of the Village of Shorewood, Milwaukee County, Wisconsin, held on the 7<sup>th</sup> day of February, 2005, a quorum being present and a majority of the Board voting therefore, said Board does ordain as follows:

SECTION 1

That Section 9-419 (K), Election Campaign Signs, of Section 9-419 Exemptions, of Article 9, Sign Code of Chapter 9 of the General Ordinances of the Village of Shorewood be repealed.

SECTION 2

That Section 13-711, Placing Commercial and Non-Commercial Handbills on Vehicles of Article 7, Regulations Controlling Littering, of Chapter 13 of the General Ordinances of the Village of Shorewood be repealed.

SECTION 3

That all ordinances or parts of ordinances conflicting with the provisions of this ordinance are hereby to such extent repealed.

SECTION 4

That this ordinance shall be enforced and take effect from and after its passing.

PASSED AND ADOPTED by the Village Board of the Village of Shorewood, Milwaukee County, Wisconsin, this 7<sup>th</sup> day of February, 2005.

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Mark Kohlenberg, Village President

Countersigned:

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Kathleen Greig, Village Clerk