

BOARD OF COUNTY COMMISSIONERS
INTER-OFFICE MEMORANDUM

To: Shington Lamy
Special Projects Coordinator

From: Patrick T. Kinni, Esq.
Sr. Assistant County Attorney

Date: July 21, 2009

RE: Constitutionality of Juvenile Curfew Ordinance

Issue

The purpose of this memorandum is to analyze the constitutionality of an ordinance providing for a juvenile curfew in the county. By way of background, County Administration was asked by the Board to draft a staff report on juvenile curfew ordinances within the State, and has noted that five counties have adopted a juvenile curfew ordinance on the basis of the State's model ordinance set forth in Section 877.20, *et seq.*, Florida Statutes.

Rule

Article I, Section 23 of the Florida Constitution provides that "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life."

In 1994 the Florida Legislature enacted Section 877.20, *et seq.*, Florida Statutes, providing counties and municipalities "with the option of adopting a local juvenile curfew ordinance by incorporating by reference the provisions of ss. 877.20-877.25." Sections 877.21-877.24 set forth the model ordinance language, including definitions, prohibitions, legal duty of parents, civil penalties, and exceptions. It should be particularly noted that the provisions of the model ordinance apply to minors under 16 years of age, that the first violation results in a written warning, and that any subsequent violations result in a civil fine of \$50. However, Section 877.25 states that these sections do not preclude local governments from adopting ordinances which are more, or less, stringent than the curfew regulations imposed under Section 877.22, Florida Statutes.

Analysis

Five years ago, in the case styled *State v. J.P.*, 907 So. 2d 1101 (Fla. 2004), the Florida Supreme Court rendered its landmark opinion on two juvenile curfew ordinances which were adopted by the City of Tampa and the City of Pinellas Park, respectively. In affirming the holdings of the Second District Court of Appeal in the cases styled *State v. T.M.*, 832 So. 2d 118

(Fla. 2d DCA 2002) (finding the City of Pinellas Park ordinance to be unconstitutional), and *J.P. v. State*, 832 So. 2d 110 (Fla. 2d DCA 2002) (finding the City of Tampa ordinance to be unconstitutional), the Florida Supreme Court held as follows:

- (1) that strict scrutiny applies when reviewing juvenile curfew ordinances;
- (2) that the ordinances in question did not implicate the juveniles' rights to free speech and assembly; and
- (3) that said ordinances were not narrowly tailored to serve compelling governmental interests and thus violated the juveniles' constitutional rights to privacy and freedom of movement.

State v. J.P., 907 So. 2d 1101 (Fla. 2004).

The two ordinances did not withstand the strict scrutiny test because, although the City of Tampa and City of Pinellas Park were able to show a compelling governmental interest in regulating the activities of minors during the hours of the curfew, the respective ordinances were not found to be narrowly tailored to accomplish their goals by the least intrusive means available.

First of all, both the Second District Court of Appeal and the Florida Supreme Court found that both curfew ordinances did satisfy the compelling interest prong of the strict scrutiny test. 907 So. 2d at 1117. For example, the Tampa ordinance included legislative findings that there was an unacceptable level of juvenile crime that threatened citizens and visitors, that effective crime fighting required focusing on juvenile crime, that there was a substantial number of violent crimes against juveniles in Tampa, and that juveniles were particularly vulnerable and unable to make critical decisions in an informed and mature manner. 907 So. 2d at 1116. The Pinellas Park ordinance contained numerous findings that were stated to be based on statistical data and reports from law enforcement (although specific data was not cited), including that a substantial amount of crime was committed by juveniles and that much of this type of crime took place at night; that there was a steady increase in crimes by and against juveniles; that juveniles were particularly vulnerable to crime and victimization; that there had been a high number of repeat juvenile offenses and an escalating juvenile crime rate that the juvenile justice system had been unable to deal with effectively; that juveniles who had been suspended or expelled from school must be prevented from disrupting schools; etc. *Id.* Although neither city provided statistical data to support their findings, the Florida Supreme Court noted that "scientific or statistical proof of the wisdom of the legislature's course" was not a requirement. 907 So. 2d at 1117. The Court otherwise declined to address the issue of statistical data. 907 So. 2d at 1118.

However, both the Second District Court of Appeal and the Florida Supreme Court concluded that both curfew ordinances failed to meet the second prong of the strict scrutiny test, as the ordinances were not narrowly tailored to reduce juvenile crime and victimization by the least intrusive means available. The Florida Supreme Court cited two specific problems with

both ordinances: overbroad coverage and criminal sanctions. The Court was particularly troubled by the criminal sanctions imposed by the ordinances. Both ordinances provided that both the offending juvenile and his or her parents could be incarcerated after the first curfew violation. The Court contrasted these sanctions with the State's model ordinance, which imposed a civil fine of \$50 for the second and any subsequent violations. The Court thus concluded that:

[T]he penalty provisions of the instant ordinances do not meet strict scrutiny. The criminal sanctions are antithetical to the stated interests of protecting juveniles from victimization. Further, the imposition of criminal sanctions is not narrowly tailored to achieve the stated interests. The same goals could be achieved by imposing a civil penalty.

907 So. 2d at 1119.

In terms of coverage, both ordinances forbid juveniles under a certain age (under 17 for Tampa, under 18 for Pinellas Park) from being out in the public after 11:00 p.m. unless the activity was covered by one of the ordinance exceptions. However, there was no exception provided in either ordinance for juveniles who were engaged in otherwise "innocent and legal conduct" after hours with parental permission, such as nonemergency errands. 907 So. 2d at 1118. As an example of innocent and legal conduct that would nevertheless violate the curfew, the Second District Court of Appeal cited a situation where a 16-year old gets off from work at 11:00 p.m. and stops by a fast food restaurant with parental permission. *J.P. v. State*, 832 So. 2d 110, 114 (Fla. 2d DCA 2002). The Florida Supreme Court found that, "[w]here a curfew sweeps too broadly and includes within its ambit 'a number of innocent activities which are constitutionally protected,' it does not satisfy the narrowly tailored aspect of strict scrutiny." 907 So. 2d at 1117. (Citation omitted.) Further, both curfew ordinances were deemed to be broad in coverage because they applied throughout the city even though there was no showing of a city-wide emergency or problem. 907 So. 2d at 1118.

It should be noted that both the Second District Court of Appeal and the Florida Supreme Court found that severing the criminal penalty provisions from the remainder of the subject ordinances could not save the ordinances, due to the other constitutional failings (the overbroad coverage of the ordinances). 907 So. 2d at 1119. It should also be noted that neither the Second District Court of Appeal nor the Florida Supreme Court addressed the constitutionality of the State's model juvenile curfew ordinance. See *J.P. v. State*, 832 So. 2d 110, 114 (Fla. 2d DCA 2002) ("we are not in any way passing on the constitutionality of the model ordinance"). It has been posed in a law review article that Florida's model curfew ordinance would not pass the strict scrutiny test due to its overbroad coverage, as the model ordinance does not except otherwise legal and permissible activities entered into with parental permission during curfew hours. See Ellen Lubensky, *Constitutional Law—Individual Rights—Florida Juvenile Curfew Ordinances Held Unconstitutional Because the Curfews Were Not Narrowly Tailored to Further an Admittedly Compelling Governmental Interest*. *State v. J.P.*, 37 Rutgers L.J. 1371, 1395

(2006). The author of the article suggests that this defect could be corrected by language permitting juveniles to be on any errand with parental permission during curfew hours. *Id.*

Conclusion

Therefore, to meet the strict scrutiny test and be upheld as constitutional in the Florida courts, a juvenile curfew ordinance: (1) should include findings supporting a compelling governmental interest; (2) must avoid overbreadth in its coverage; and (3) must not contain criminal sanctions. Adopting an ordinance that closely follows the State's model ordinance language (Sections 877.20-.24, Florida Statutes) would be advisable, except that the exceptions to the ordinance may need to include more exceptions than the model ordinance, such as permitting juveniles to be on any errand, not just an emergency errand, with parental permission during curfew hours. In other words, a juvenile curfew ordinance should be careful to avoid prohibiting "otherwise legal and permissible activities" entered into with parental permission during curfew hours.

Should you have any questions, please contact our office.

PTK/plp