



LEGAL DEPARTMENT

ACLU of Kansas & Western Missouri

3601 Main Street
Kansas City, MO 64111
Tel. (816) 756-3113
Fax (816) 756-0136

By First Class Mail & E-mail: Lowell.Gard@kcmo.org

January 16, 2013

Mr. Lowell C. Gard, City Prosecutor
Office Of The KCMO Prosecutor
1101 Locust
Kansas City, MO 64106

Re: *City of Kansas City v. Robert R. Niedermeyer*, Case No. 2G908895
Our File No.:12-0005580

Dear Lowell:

I represent Robert R. Niedermeyer in the above-referenced municipal court case in which he is charged with violating the City's sign ordinance, Code § 88-445-06-A-2(d). The facts are as follows:

Mr. Niedermeyer lives in a single family home in Brookside and is a Libertarian. During the recent presidential election season, he displayed four campaign signs in support of Gary Johnson, the Libertarian Party's presidential candidate. Each of those signs measured approximately 22" by 15" (about 2.3 square feet per sign). Thus, the total area of Mr. Niedermeyer's four signs added up to approximately 9.2 square feet. After the general election on November 6, 2012, and specifically after November 20, 2012, Mr. Niedermeyer continued to display all four of his signs in his front yard but not in the public right-of-way. See enclosed photograph.

In early December 2012, Mr. Niedermeyer received a letter dated December 5, 2012, from Brian Thompson of the City's Planning Department (copy enclosed). In that letter, Mr. Thompson alleged that Mr. Niedermeyer was in violation of § 88-445-06-A-2(d) of the City's sign ordinance, which provides that "During the period from 6 weeks prior to a public election to be held in Kansas City to 2 weeks after such election, each [single family home] lot may display additional signs not bearing commercial messages. No such sign may exceed 8 square feet in area or 4 feet in height." This provision serves as an exception to the general residential sign ordinance, Code § 88-445-06-A-2(c), which allows a residential home owner to display – at any time of the year – "additional interim signs not bearing commercial messages" so long as no sign exceeds 8 square feet in area or 4 feet in height and so long as the aggregate area of all interim signs displayed does not exceed 16 square feet.

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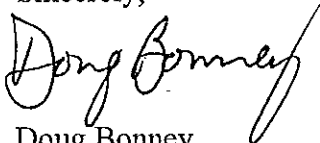
On or about January 9, 2013, Mr. Niedermeyer received by mail a citation (copy enclosed) charging him with violating the sign ordinance by continuing to display one Gary Johnson for President sign in his yard after the election window had closed on or about November 20, 2012 (two weeks after the general election) and after he had received Mr. Thompson's letter dated December 5, 2012.

I believe the Planning Department's Mr. Thompson has misread the City's sign ordinance. He apparently interprets the provisions of Code § 88-445-06-A-2(d) as prohibiting residents from displaying interim signs bearing a candidate's name after the election window closes. If Mr. Thompson's interpretation is correct, the ordinance is unconstitutional because it would treat political candidate signs differently from other noncommercial signs and would thus be content-based. *See Whitton v. City of Gladstone*, 54 F.3d 1400, 1402-03 (8th Cir. 1995). In fact, however, I believe Mr. Thompson's reading conflicts with the plain meaning of the ordinance. As I read it, the sign ordinance is content-neutral, allowing the display an unlimited number of noncommercial signs on residential lots during campaign seasons and up to 16 square feet of noncommercial interim signs at all other times.

When he displayed one (or even four) Gary Johnson for President signs in his yard after the election window had closed, Mr. Niedermeyer was in full compliance with the City's sign ordinance. Thus, I ask that you dismiss this ticket and instruct Mr. Thompson and others in the Planning Department about the proper interpretation and application of the sign ordinance as it relates to noncommercial signs in residential areas. If you will not dismiss this ticket, please let me know because I have another court appearance on the afternoon of February 4, 2013, and will need either to request a continuance or to arrange for another lawyer to represent Mr. Niedermeyer in municipal court on that date.

I look forward to hearing from you about this matter at your earliest convenience.

Sincerely,



Doug Bonney
Chief Counsel & Legal Director
Direct Dial: (816) 994-3311

Enclosures

cc: William D. Geary, City Attorney (by e-mail only) (w/ enclosures)
Robert R. Niedermeyer