

# Townships and the Regulation of Political Signs

By: Kaitlin Hall, OTA Director of Public Relations

Elections are fast approaching, and with them come political signs. You know the kind - those pesky emblems that seem to appear before your eyes everywhere you look. While political signs serve a valid purpose, as with most aspects of life, some tend to go overboard.

Ohio Revised Code Chapter 519 gives townships the authority to adopt zoning regulations. Within this zoning code, townships may regulate signs, including political signs, so long as it is done within constitutional limitations. The First Amendment, of course, protects free speech and similar forms of expression. A governmental body may not generally regulate speech based upon its content. But a governmental body may impose reasonable restrictions on the time, place or manner of speech, if the regulations are content-neutral and narrowly tailored to serve a significant governmental interest.

In regulating signs pursuant to their zoning authority, townships would be wise to legislate on a content-neutral basis. For example, in *Davis v. City of Green*, Ohio's Ninth District Court of Appeals upheld an ordinance of a municipal corporation setting forth maximum sizes for various types

of signs in residential areas. See 106 Ohio App.3d 223 (1995). The basis of the decision was that the ordinance was content-neutral and merely imposed a time, place and manner restriction which was narrowly tailored to meet the city's objective, without reference to the type of speech it regulated. In contrast, where a city ordinance singled out and prohibited lawn signs with a political message, the ordinance was found to be unconstitutional as it was content-based and the city was unable to show a compelling interest to justify the restriction. *City of Euclid v. Mabel*, 19 Ohio App.3d 235 (1984).

The United States Supreme Court has spoken on this subject, recognizing that a political subdivision has a legitimate interest in regulating signs, which "take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation." *City of Ladue v. Gilleo*, 512 U.S. 43 (1995).

It can, therefore, be deduced that regulating the physical characteristics of signs is generally permissible, so long as uniform restrictions are implemented for *all* signs, not just political signs.

The size and material from which political signs are constructed are examples of characteristics that may be regulated, but again, must be done so on a content-neutral basis.

The same analysis applied to the physical characteristics of signs can also be applied to the regulation of the location of signs, such as a regulation specifying a minimum setback

distance from any public right of way.

An example of a zoning code which regulates political signs on a content-neutral basis is that of Colerain Township in Hamilton County. Colerain Township's zoning code regulates political signs in the same manner that it regulates other temporary signs. Its regulations provide that any temporary signs, including political signs, must be placed 10 feet back from any right of way and 20 feet from adjacent property and may be a maximum of six feet tall. It further provides that there is no time frame for when such signs may be displayed, nor does it limit the number of such signs which may be displayed, although the township does encourage residents to remove them in a timely manner.

Some townships may want to limit the number of political signs which a resident may display, or to limit the area in which political signs can be placed, effectively limiting the number of signs which can be displayed. Such a regulation was struck down by Ohio's Ninth District Court of Appeals in *Hudson v. Arshinkoff*, where the ordinance in question limited temporary signs in residential districts to eight square feet. 2005-Ohio-6975. The court in *Hudson* found that the regulation burdened speech by preventing homeowners from expressing support for as many candidates as they desire. Further, even though the square footage restriction was content-neutral and applied to all temporary signs in a residential district, the Court found the ordinance was not necessary for the aesthetic purposes for which

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it was enacted, and thus was not narrowly tailored to serve the government's interest. The square footage limitation did not respond to particular concerns of the municipality, which could have been accomplished through less restrictive means, according to the Court.

The ability to regulate the time and duration that political signs may be erected has also been addressed by the courts and found to be problematic. One such restriction, which allowed political signs only to be erected for 17 days prior to any election and mandated removal within 48 hours after the election, was struck down by the Ohio Supreme Court. See *Painesville Build. Dept. v. Dworken and Bernstein*, 89 Ohio St.3d 564 (2000). The Court held that the ordinance was not a permissible time, place and manner restriction, but rather that it imposed an effective ban on the posting of political signs for the

majority of the year, allowing only a limited window of time for this type of political speech. In coming to this conclusion the Court noted that "The overwhelming majority of courts that have viewed sign ordinances imposing durational limits for temporary political signs tied to a specific election date have found them to be unconstitutional."

Loveland & Brosius, a Columbus law firm, recommends that political signs *not* be regulated as separate and distinct from other types of signs, as this increases the likelihood that the township's resolution will be found content-based and unconstitutional. They point out that there is not generally a problem regulating the maximum size of temporary signs and the setback of such signs, so long as *all* signs posted on residential property are treated equally.

If safety is one of the concerns motivating a township's size and

minimum setback regulations, the township should ensure that these regulations are narrowly tailored to meet its safety concerns, and are consistent throughout the township's zoning code. Also, any regulation pertaining to the permissible area of signs should be clearly explained in the township's zoning code, and enforced as a regulation on the size of individual signs, rather than a regulation on the total maximum area of all signs on a property, viewed collectively, which could be interpreted to limit the total number of signs which may be displayed.

Regulating political signs seems to be an "enter at your own risk" type of endeavor. We encourage you to contact your legal counsel before implementing a resolution. ☺

*Legal information provided by Loveland & Brosius, LLC.*

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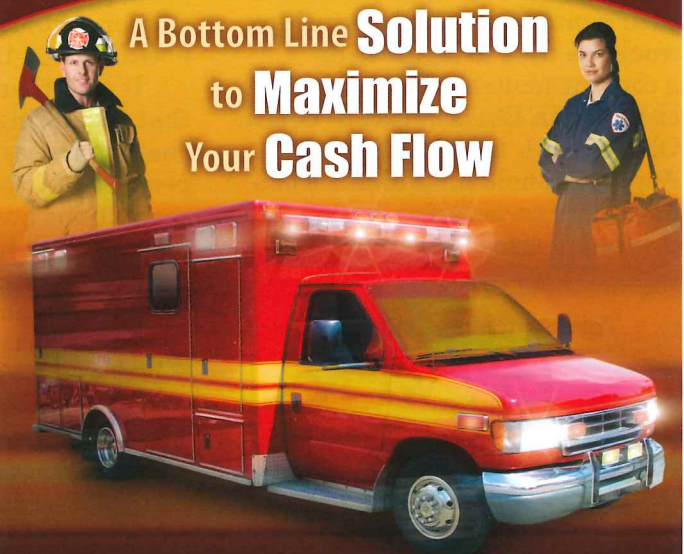
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