Local Government Law Bulletin

DAVID M. LAWRENCE, Editor

Business and Occupational Licensing by Cities and Counties

William A. Campbell

THIS *Bulletin* discusses the authority of North Carolina local governments to license and regulate the conduct of businesses and occupations and the statutory and constitutional limitations on the exercise of that authority. Part I discusses the statutory authority for this sort of regulation and lists the occupations and businesses that local governments are expressly prohibited from licensing; Part II examines the state constitutional limitations on licensing; and Part III discusses the federal constitutional limitations.

I. STATUTORY AUTHORITY

The statutory provisions allowing municipalities and counties to regulate businesses and occupations are G.S. 160A-194 and G.S. 153A-134, respectively; the two are virtually identical. The authority is broadly stated, giving local governments power to regulate and license "occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience." Both statutes provide that any local regulation must be consistent with state law and then further state that nothing in these statutes authorizes a city or county "to examine or license a person holding a license issued by an occupational licensing board of this State . . . ." This denial of authority in effect leaves local governments without power to license occupations and businesses that are required to be licensed by a state agency or board. The following occupations are licensed by state boards or agencies and therefore may not be licensed locally. The General Statutes chapter number under which each is licensed appears after each occupation or occupational group.

Architects 83A
Attorneys 84
Auctioneers 85B
Bail bondsmen 85C
Barbers 86A
Cosmeticians and manicurists 88
Engineers and land surveyors 89C
Foresters 89B
General contractors, plumbing and heating contractors, electrical contractors, refrigeration contractors 87
Hearing aid dealers and fitters 93D
Landscape architects 89A
Landscape contractors 89D

The author is an Institute faculty member whose fields include privilege license taxation.

INSTITUTE OF GOVERNMENT, The University of North Carolina at Chapel Hill

Physicians, dentists, pharmacists, optometrists, osteopaths, chiropractors, nurses, veterinarians, podiatrists, funeral directors, dental hygienists, opticians, psychologists, physical therapists, marital and family therapists, nursing home administrators, speech and language pathologists, audiologists 90
Public accountants 93
Real estate brokers 93A
Sanitarians, water treatment facility operators, wastewater treatment facility operators 90A

Two other statutes, G.S. 160A-181 and G.S. 153A-135, authorize cities and counties to regulate, but not to license, places of amusement. Local governments may regulate establishments that hold ABC permits, but the regulation must be consistent with state ABC licenses and regulations. And still other statutes, G.S. 160A-178 and G.S. 153A-125, authorize cities and counties to regulate solicitations for charitable contributions and the business activities of itinerant merchants, salesmen, and drummers. Local regulation of these types of activities has produced an extensive body of case law under the federal Constitution that will be discussed in Part III of this *Bulletin*.

If a local government elects to license a business or occupation, G.S. 160A-194 (cities) or G.S. 153A-134 (counties) authorizes it to examine applicants for licenses and to charge them a reasonable fee for the examination. It may be that North Carolina courts would construe the term "examination" broadly to allow the unit to charge a fee calculated to compensate it for the reasonable costs of administering the regulation this would be in line with the cases from other states discussed below—rather than narrowly to allow recovery of only the costs of administering and reviewing the application and examination (if any). In any event, it is clear that any fee to be charged under licensing schemes must not exceed the reasonable cost of administering the regulation and may not be used as a general revenue measure;[1] both statutes make it plain that the regulatory and licensing authority is distinct from the privilege license taxing authority granted by other statutes.[2]

G.S. 160A-181 and G.S. 153A-135, authorizing regulation of amusements, and G.S. 160A-178 and G.S. 153A-125, authorizing the regulation of solicitors for charities and itinerant salesmen, do not provide for any fees to be charged in connection with administering the regulations. Courts in some states have held that the authority to charge a reasonable license or permit fee is included in a local government's police power even though it is not explicitly granted,[3] and a leading treatise states that this is the general rule on the question.[4] One must be careful in generalizing from these cases, however, because each is grounded in a particular state's constitutional and statutory grant of authority to local governments, its precedents regarding the scope of the police power, and the precise language of the statute under consideration. A plausible argument can just as easily be made in the North Carolina context that the legislature authorized a fee to be charged in G.S. 160A-194 and G.S. 153A-134 and did not authorize it in G.S. 160A-181 and G.S. 153A-135 and G.S. 160A-178 and G.S. 153A-125, and since all of these statutes deal with police power regulations and were enacted as parts of the same bills, no inference of authority to charge fees should be drawn from the legislature's silence.

G.S. Chapter 91 establishes special requirements for the licensing of pawnbrokers by municipalities. Under G.S. 91-3, a person who applies for a municipal pawnbroker's license must file with the mayor a $1,000 bond payable to the city and conditioned on the faithful performance of the license requirements. Under G.S. 91-2, the pawnbroking business may not be conducted outside municipal limits.

G.S. 105-64(c) and G.S. 105-64.1(c), in Schedule B of the Revenue Act, allow cities and counties to prohibit the location of pool tables and bowling alleys within their jurisdictions. While there is reason to doubt whether an absolute prohibition could survive constitutional challenge today,[5] it is certain that before an application to operate pool tables or bowling alleys is rejected or a license is revoked, the applicant or licensee must be granted due process rights of notice and a fair hearing, as discussed in Part II.

1. For a discussion of the distinction between the two types of charges, *see* Great Atlantic and Pacific Tea Co. v. Maxwell, 199 N.C. 433, 154 S.E. 838 (1930).

2. For a further discussion of the nature and sources of the power to regulate by license as distinguished from license taxation, *see* W. CAMPBELL, NORTH CAROLINA PRIVILEGE LICENSE TAXATION 3-4 (Institute of Government, 1981).

3. *See* United Business Comm'n v. City of San Diego, 91 Cal. App. 3d 156, 154 Cal. Rptr. 263 (Ct. App. 1979); Utter v. State, 571 S.W.2d 934 (Tex. Ct. Crim. App. 1978); Chicago Heights v. Western Union Tel. Co., 406 Ill. 428, 94 N.E.2d 306 (1950); and Commonwealth v. Clay, 224 Mass. 271, 112 N.E. 867 (1916).

4. 9 MCQUILLEN, MUNICIPAL CORPORATIONS § 26.27 (3d rev. ed. 1978).

5. In Brunswick-Balke-Collender Co. v. Mecklenburg County, 181 N.C. 386, 107 S.E. 317 (1921), the court in dicta stated that this authority was constitutional as far as pool tables are concerned. The case was decided, however, before the North Carolina decisions holding that the interest in engaging in a particular occupation is a property right that requires application of due process principles.

II. STATE CONSTITUTIONAL LIMITATIONS

A. Valid Exercise of Police Power

Despite the broad statutory grants of authority discussed in Part I, substantial restraints on the exercise of the licensing power have been imposed through court decisions. A fundamental limitation is that the regulation or license requirement must be a valid exercise of the police power; that is, there must be some justification in public policy for regulating the activity licensed. If the court finds no such justification or finds the justification inadequate, it will hold that the license requirement violated at least three provisions of the North Carolina Constitution: Article I, Section 19 (deprivation of liberty and property contrary to the law of the land); Article I, Section 32 (no exclusive emoluments); and Article I, Section 34 (monopolies not to be allowed).[6]

The watershed case in the development of this case law is *State v. Harris* (1940),[7] in which the court first took a critical look at the constitutionality of occupational licensing at the state level and established the major principles that govern this area of law. Though some of the many cases that before *Harris* had uncritically upheld various types of regulation and licensing may still be valid under *Harris* principles, they should not be relied on too heavily.[8] *Harris* dealt with a statute that created a commission to examine and license dry cleaners. The statute did not apply to all of the state's counties, and it contained no standards to guide the commission in granting and denying licenses. The court held it unconstitutional on three grounds: (1) lack of uniformity—it did not apply to all dry cleaners in the state; (2) unconstitutional delegation of legislative authority because of lack of standards; and (3) creation of an unconstitutional monopoly because nothing about the dry cleaning business warranted this sort of exercise of the police power. In summarizing its position on this last point, the court stated:

> [T]he regulation of a business or occupation under the police power must be based on some distinguishing feature in the business itself or the manner in which it is ordinarily conducted, the natural and probable consequences of which, if unregulated, is to produce substantial injury to the public peace, health, or welfare. When such classifications are made, the court will pass on their reasonableness and determine as to the validity of the legislation.[9]

The court went on to say that even when a license is generally valid under the police power, the conditions of the license must have a "reasonable and substantial relation to the evil it purports to remedy."[10] Thus, for example, if the licensing of physicians is generally valid because of the training and skill required to practice that profession, the licensing requirements must further the objectives of calling forth the requisite skill and training.

On *Harris* principles, the court in *State v. Ballance*[11] declared unconstitutional a scheme for licensing photographers by the state. It said that nothing about the practice of photography justified this sort of regulation; photography was not an occupation clothed with the public interest. In this case, the court explicitly stated that the invalid attempt to exercise the police power created both a deprivation of liberty and property without due process of law and an unconstitutional monopoly.

In *Roller v. Allen*,[12] again following *Harris* principles, the court invalidated on constitutional grounds a statute that created a licensing board and requirements for licensing tile contractors. It found that the occupation of tile contractor had too little impact on the public health, safety, and morals to justify the licensing requirements. The court stated that the right to earn a livelihood is a property right that cannot be limited or taken away except under the police power in the furtherance of some paramount public interest.

State v. Warren[13] may signal a small retreat from strict application of *Harris* principles. In that case the court upheld a statute that established a licensing board to regulate real estate brokers and salesmen. The statute provided that to obtain a license a person must pass an examination "to determine . . . the honesty, truthfulness, integrity and competency of the applicant." The court said that the occupation of real estate broker was sufficiently in the public interest to justify licensing. The opinion contained little analysis, and the court appeared

6. For a fairly recent application of these provisions to a denial of a certificate of need for the construction and operation of a new hospital, *see In re* Aston Park Hosp., 282 N.C. 542, 193 S.E.2d 729 (1973).

7. 216 N.C. 746, 6 S.E.2d 854 (1940).

8. The cases are Roach v. Durham, 204 N.C. 587, 169 S.E. 149 (1933), upholding state and municipal plumbers' licenses; State v. Lockey, 198 N.C. 551, 152 S.E. 693 (1930), upholding licensing of barbers; State v. Vanhook, 192 N.C. 831, 135 S.E. 927 (1921), upholding city ordinance authorizing board of aldermen to prohibit dance halls that charged fees; State v. Siler, 169 N.C. 314, 84 S.E. 1015 (1914), upholding licensing of chiropractors; State v. Hicks, 142 N.C. 689, 57 S.E. 441 (1907), upholding licensing of dentists; and State v. Van Doran, 109 N.C. 864, 14 S.E. 32 (1891), upholding licensing of physicians.

9. State v. Harris, 216 N.C. 746, 758, 6 S.E.2d 854, 863.

10. *Id.* at 759, 760, 6 S.E.2d 863.

11. 229 N.C. 764, 51 S.E.2d 731 (1949).

12. 245 N.C. 516, 96 S.E.2d 851 (1957).

13. 252 N.C. 690, 114 S.E.2d 660 (1960).

to base its decision largely on cases from other jurisdictions that upheld the licensing of real estate brokers; it made little effort to show how the occupation of real estate broker is vested with the public interest in ways that dry cleaning, photography, and tile contracting are not. The dissent stated that the case was indistinguishable from *Harris* and *Roller* and therefore the licensing requirements should be held invalid.

Although the cases discussed above all dealt with state licensing provisions, the court has said that the same principles apply to local licensing and regulatory ordinances.[14] The lesson of these cases appears to be that before a local government may validly require an occupation or business to be licensed, the occupation or business must in some aspect affect the public health, safety, or welfare substantially differently from the way the general run of callings do, and the local government that imposes the licensing requirement or regulation should be able both to articulate clearly what that impact is and to defend its regulation. The court has made it clear that it will not accept at face value, or defer to, a legislative finding that a particular trade is so clothed with the public interest as to justify its regulation. Moreover, the licensing conditions or regulatory requirements must address the public concern involved. If technical skills or experience must be acquired, the license must require them; if safety is the concern, the license must address that point.

B. Equal Protection

The essence of the equal protection requirement where licenses and regulations are concerned is that any classification of businesses and occupations must be reasonable and must be based on factual differences among the activities that justify different treatment similar trades must not be treated dissimilarly. Admittedly, this is not an area of the law where lines can be drawn with much precision, and several of the North Carolina Supreme Court's equal protection cases are difficult to reconcile. In general, if at all possible the court will find the challenged classification reasonable. For example, in *Raleigh Mobile Home Sales, Inc. v. Tomlinson*[15] the court held that a provision of Raleigh's Sunday-closing ordinance that prohibited the sales of mobile homes but permitted the sales of conventional homes did not violate the equal protection standard.

Despite the generous authority to classify granted by the court, local governments can still run afoul of equal protection principles in regulating businesses. A Charlotte massage parlor ordinance that prohibited massages of persons of one sex by persons of the other sex but exempted physicians and similar health professionals and also YMCAs, YWCAs, beauty shops, and barber shops from this prohibition was held invalid on equal protection grounds. The court was apparently of the opinion that YMCAs, YWCAs, beauty shops, and barbershops were too similar to the private massage parlors that were subject to the prohibition for dissimilar treatment to be reasonable.[16] Later the court found a Fayetteville massage parlor ordinance that in substance was almost identical to Charlotte's except for the exemption of YMCAs, YWCAs, beauty shops, and barber shops to be constitutional.[17]

Another basis for invalidating a business regulation on equal protection grounds, akin to the unreasonable-exemption basis, is that the ordinance is not sufficiently inclusive of the businesses it purports to regulate. *State v. Greenwood*[18] involved an Asheville ordinance that required billiard halls to close on Sunday, though Asheville had no general Sunday-closing ordinance. The court invalidated the ordinance on equal protection grounds, saying that the city could not properly single out billiard halls from among all of the city's amusement and recreation businesses for Sunday closing. Bowling alleys, dance halls, skating rinks, swimming pools, and amusement parks are all potential attractions for troublemakers, but they are also facilities for wholesome recreation. It was discriminatory, the court said, to single out only one type of amusement for Sunday closing. A strong inference can be drawn from this decision that special regulations for amusements adopted pursuant to G.S. 160A-181 and G.S. 153A-135 are constitutionally suspect unless they apply equally to all such amusements. It could also be argued on the basis of *Greenwood* that the special provisions authorized by G.S. 105-64(c) and G.S. 105-64.1(c) for regulating pool tables and bowling alleys are unconstitutional.

C. Due process

Under both Article I, Section 19, of the North Carolina Constitution and the Fourteenth Amendment to the United States Constitution, liberty and property

14. *See* Cheek v. City of Charlotte, 273 N.C. 293, 160 S.E.2d 18 (1968), a case involving regulation of massage parlors. It is discussed in subdivision II.B. of this *Bulletin*.

15. 276 N.C. 661, 174 S.E.2d 542 (1970).

16. Cheek v. City of Charlotte, 273 N.C. 293, 160 S.E.2d 18 (1968).

17. Smith v. Keator, 285 N.C. 530, 206 S.E.2d 203, *appeal dismissed*, 419 U.S. 1043 (1974).

18. 280 N.C. 651, 187 S.E.2d 8 (1972).

may not be taken by an agency of state or local government without due process of law. A business license or regulatory ordinance can violate due process requirements in two ways. First, it may not contain sufficient standards to guide the licensing board or official in granting or denying the license, thereby making the agency's decision arbitrary. Second, it may lack a provision that guarantees the applicant or licensee both notice of the reasons if the license is denied or revoked and a hearing on the matter if he requests it.

Carolina Restaurants, Inc. v. City of Kinston[19] illustrates the problem of arbitrariness. In that case a section of the Kinston ordinance authorized the city council to deny a license to restaurants, lunch counters, pressing clubs, movie theaters, and markets if the applicant was of "bad moral character," or if the business was in an "unsuitable place," or if the denial was in the "best interest of the city." The plaintiff, an applicant for a restaurant license, had complied with the zoning ordinance and other applicable provisions of the city code but was denied a license under this provision. In a very brief opinion, the court of appeals declared the ordinance unconstitutional as a violation of due process of law. The court seemed most concerned about the complete lack of standards in the ordinance; the denial or approval of a license application was wholly discretionary with the city council.

Three cases illustrate the notice and hearing aspects of the due process requirement. In *State v. Parrish*,[20] a bail bondsman's license was suspended without a hearing because of the misconduct of his attorney-in-fact. The court held that the suspension violated due process because the bondsman was not given an opportunity to be heard. "A license to engage in business or practice a profession is a property right that cannot be taken away without due process of law."[21]

The sort of notice and hearing provisions that satisfy due process appears in *Smith v. Keator*,[22] the Fayetteville massage parlor ordinance case. The ordinance said that before a license could be revoked the chief of police had to submit a written recommendation of revocation to the city council, stating the reasons for revocation, and also send a copy of the recommendation by registered mail to the licensee. The ordinance contained no provisions for a hearing before either the chief of police or the city council, but the court found that the provision requiring notice to the licensee should be read also to give the licensee a right to a hearing before the council. In addition, the court interpreted the provision requiring that license applications be acted on by the council as also entitling an applicant to a hearing before the council.[23] "The law of the land and due process of law are interchangeable terms and both import notice and an opportunity to be heard or defend in a regular proceeding before a competent tribunal."[24]

In *Parker v. Stewart*,[25] the Court of Appeals had before it a Harnett County massage parlor ordinance providing that the sheriff could revoke a license after giving the licensee both written notice of the grounds for revocation and an opportunity for a hearing to answer the charges. The court held the ordinance unconstitutional on due process grounds, finding that a hearing before the sheriff was not a hearing before a "competent tribunal" as that phrase was used in *Smith v. Keator*. Although the court did not explain its reasoning, it apparently believed that a revocation hearing before the official charged with enforcing violations of the ordinance is unlikely to be a fair hearing.

The essential elements of a notice and hearing that emerge from these cases are as follows: (1) Before a license application is denied or a license is revoked or suspended, written notice of the precise grounds for the denial, revocation, or suspension must be sent to the affected party by either the governing board or a responsible official like the tax collector, manager, sheriff, or chief of police; (2) the applicant or licensee must be given an opportunity to present his case to the governing board or a special licensing board before the action becomes final. It appears to be permissible to allow the tax collector, sheriff, or chief of police to make a preliminary determination on the application, revocation, or suspension or to make a recommendation to the governing board, but a hearing before the governing

19. 32 N.C. App. 588, 233 S.E.2d 74 (1977).
20. 254 N.C. 301, 118 S.E.2d 786 (1961).
21. *Id.* at 303, 118 S.E.2d at 788.
22. 285 N.C. 530, 206 S.E.2d 203 (1974).
23. One troubling aspect of this case is that the city council could revoke a license "if in its sound discretion it is deemed in the best interests of the health, safety, welfare, or morals of the people of the city." One challenge to the ordinance was that this basis for revocation was so vague as to give the council arbitrary revocation power. The court did not address this question except to say that the council would not be permitted to revoke a license except on "reasonable grounds."

On a related question the U.S. Supreme Court had before it a license ordinance for coin-operated amusement devices that required the chief of police to investigate the applicant's background for "connection with criminal elements" and make a recommendation to the city manager. The manager considered this recommendation along with other information and then decided whether to issue the license, with a right of appeal to the city council. The court held that the ordinance was not void for vagueness because the chief of police's recommendation was only one factor to be considered, and the granting or denial of a license was not based solely on it. City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283 (1982).
24. 285 N.C. at 535, 206 S.E.2d at 206.
25. 29 N.C. App. 747, 225 S.E.2d 632 (1976).

board must be provided if the affected party requests it. The cases do not specify what sort of hearing must be given or the procedures to be followed, but a federal case involving denial of a municipal liquor license held that at such a hearing the applicant must be both informed of the standards by which his application is to be judged and permitted to cross-examine witnesses against him.[26]

III. FEDERAL CONSTITUTIONAL RESTRAINTS

A. Commerce Clause

The commerce clause of the United States Constitution[27] not only authorizes Congress to regulate interstate commerce but also prohibits state and local governments from discriminating against interstate commerce or placing undue burdens on that commerce. As a general matter, so long as a local regulation of businesses or occupations applies evenhandedly to both in-state and interstate businesses, serves a reasonable local purpose, and does not place an "undue" burden on interstate commerce (and the Supreme Court decides what burdens are undue), the local regulation will be found constitutional under the commerce clause.[28] Problems are most likely to arise with regard to local regulation of salesmen, solicitors, and itinerant merchants. So long as the regulations apply to all businesses of a class and are reasonable, they will generally be upheld under the commerce clause. *Regulation* of these businesses should be sharply distinguished from *privilege license taxation* of them. Where privilege license taxation is concerned, the court has historically made a critical distinction between drummers and peddlers.[29] Drummers are salesmen who solicit orders for goods that are to be filled through the channels of interstate commerce, and no license tax may be placed on their activities.[30] Peddlers, on the other hand, carry with them the goods they offer to sell, and a license tax on their activities will be upheld.[31] No such distinction obtains where regulation, as opposed to taxation, is concerned.

B. First Amendment

The First Amendment[32] protects the freedoms of speech and press and the free exercise of religious beliefs. Local regulations that attempt to restrict persons engaged in activities protected by that amendment, depending on the nature and severity of the regulations, may be held invalid on First Amendment grounds. The Supreme Court has stated generally that to withstand challenge a local regulation controlling such activities must serve a legitimate governmental purpose and must be narrowly drawn to achieve that purpose.[33]

1. **Green River Ordinances.** An important case upholding a local government's right effectively to prohibit door-to-door salesmen is *Breard v. Alexandria*.[34] The city of Alexandria, Louisiana, adopted an ordinance making it a misdemeanor for "solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise" to make door-to-door calls unless invited to do so by the owner or occupant of the residence. This type of restriction is known as a Green River ordinance,[35] and its effect is to prohibit door-to-door selling. Solicitors for magazine subscriptions that would be filled by mail challenged the ordinance on two grounds: (1) The ordinance placed an undue burden on interstate commerce; and (2) since periodicals were involved, it improperly infringed freedom of the press. The Court found both grounds of the challenge unpersuasive. It held that the ordinance fell equally on both local and out-of-state solicitors and was actually a restriction on a form of solicitation rather than a burden on commerce. This type of regulation of the commercial aspects of the press, the Court said, was within the bounds allowed by the First Amendment.[36] This last point is an

26. Hornsby v. Allen, 326 F.2d 605 (5th Cir. 1964).

27. Art. I, § 8(3).

28. *See* Pike v. Bruce Church, Inc., 397 U.S. 137 (1970), and Breard v. Alexandria, 341 U.S. 622 (1951).

29. See annotation at 48 L.Ed.2d 917.

30. *See, e.g.*, Memphis Steam Laundry Cleaner, Inc. v. Stone, 342 U.S. 389 (1952), and Robbins v. Shelby County Taxing District, 120 U.S. 489 (1887).

31. *See, e.g.*, Emert v. Missouri, 156 U.S. 296 (1895), and Howe Machine Co. v. Gage, 100 U.S. 676 (1880). The foundations of this distinction between drummers and peddlers where license taxes are concerned would appear to have been shaken by recent cases that have upheld state gross receipts taxes on interstate commerce Standard Pressed Steel Co. v. Washington, 419 U.S. 560 (1975), and Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977) but the court has not yet reviewed the question of local taxes on drummers and peddlers in light of these recent decisions.

32. U.S. CONST. amend. I.

33. *See* Hynes v. Mayor of Oradell, 425 U.S. 610 (1976).

34. 341 U.S. 622 (1951).

35. The name comes from the fact that the first such ordinance was adopted by Green River, Wyoming.

36. Since the *Breard* case was decided, the court has extended limited First Amendment protection to commercial speech; but a recent case Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981) (plurality opinion) allows the inference that the *Breard* case is still valid. Not all regulation of the commercial side of the newspaper and magazine business will stand, however; *see* Minneapolis Star and Tribune Co. v. Comm'r of Revenue, 51 U.S.L.W. 4315 (Mar. 29, 1983), which invalidated a special use tax on ink and paper used by certain newspapers.

important one: that the issue was a commercial activity—the solicitation of sales—and not the distribution of literature or other noncommercial type of house-to-house calls.

2. **Door-to-Door Distribution of Written Materials.** In *Martin v. Struthers*,[37] a municipal ordinance prohibited door-to-door distribution of handbills and circulars. A member of Jehovah's Witnesses was convicted under the ordinance of distributing door-to-door a leaflet announcing a religious meeting. The conviction was appealed, and the Court found the ordinance unconstitutional. It violated the First Amendment by improperly attempting to restrict the dissemination of ideas in written form. The court did say, in dicta, that a municipality could properly require some sort of identification for the solicitor to show his authority to represent the cause and his personal identity.

3. **Door-to-Door Solicitation for Charities and Political Canvassing.**[38] Regulation of door-to-door solicitation for charities and canvassing for political campaigns carries a heavy burden under the First Amendment. No Supreme Court cases have involved the outright prohibition of such activities, but in light of the cases that have been decided and the special protection given these activities under the First Amendment, it is very doubtful that such a prohibition would stand. In *Hynes v. Mayor of Oradell*,[39] a municipal ordinance required persons canvassing for political campaigns or soliciting for "recognized charitable causes" house to house to notify the police department, in writing, for purposes of identification. The Court held the ordinance too vague and too lacking in specificity to withstand First Amendment review. The ordinance neither defined "recognized charitable cause" nor sufficiently explained what would constitute compliance with its terms.

Another more tightly drawn effort to restrict house-to-house solicitation by charities was also struck down. In *Schaumburg v. Citizens for a Better Environment*,[40] a municipal ordinance prohibiting door-to-door solicitations by charities that did not use at least 75 per cent of their receipts for charitable purposes was held invalid under the First Amendment as being overbroad.

A regulation of charitable solicitations that may possibly withstand First Amendment challenge has been devised by Houston, Texas. Houston's ordinance requires persons who are soliciting for charitable purposes to obtain a certificate of registration from the tax collector. To obtain the certificate, the organization has to furnish certain information, including the names of its officers, and the tax collector must issue the certificate within ten days of the application. His only basis for refusing to issue the certificate is that the information is incomplete, and he must inform the applicant of precisely what is missing. Solicitors are also required to wear identification cards. When the ordinance was challenged on First Amendment grounds, the federal court of appeals held that it was not unconstitutional on its face but remanded the case to the district court for a hearing to determine whether the ordinance, as applied, was an impermissible burden on the exercise of the plaintiff's First Amendment rights or discriminated against the plaintiff.[41]

4. **Newspaper Vendors.** Two federal court of appeals cases have struck down municipal ordinances that required the licensing of newsboys. The ordinance invalidated in *Strasser v. Doorley*[42] required the applicant to be of good character and provided that the license could be revoked for disorderly conduct and other reasons. Licensees were required to wear a metal badge on their cap or hat. The court held that the ordinance was both vague and overbroad and therefore was invalid under the First Amendment. It also found that newsboys' having to be licensed and to wear a badge was an impermissible burden on the exercise of First Amendment rights. In *Wulp v. Corcoran*,[43] a virtually identical ordinance in Cambridge, Massachusetts, was struck down on the same grounds.

37. 319 U.S. 141 (1943).

38. For a detailed discussion of charitable solicitation, *see* Rankin, *Regulating Solicitation of Charitable Contributions*, LOCAL GOVERNMENT LAW BULLETIN No. 15 (Institute of Government 1979).

39. 425 U.S. 610 (1976).

40. 444 U.S. 620 (1980).

41. International Society for Krishna Consciousness of Houston, Inc. v. City of Houston, 689 F.2d 541 (5th Cir. 1982).

42. 432 F.2d 567 (1st Cir. 1970).

43. 454 F.2d 826 (1st Cir. 1972).