



MEMORANDUM

To: City of Seguin Mayor and Council
From: Andy Quittner, City Attorney *AQ*
Date: April 13, 2016
Re: Solicitation Ordinance

On a fairly regular basis city staff, particularly the police department, receive complaints about persons hanging around and asking others for money. At times some of these “panhandlers” can get quite aggressive. Another series of complaints arises from persons camping on public property. Addressing the camping issue is fairly straight forward. Solicitation and panhandling are a different matter.

Entrenched in our legal history is the idea that money and many of the activities surrounding money – such as door to door sales, solicitation and panhandling – is speech, protected by the First Amendment to the United States Constitution. As a result of this jurisprudence solicitation activities cannot be banned; and, in fact, regulations must be narrowly tailored to meet significant governmental interests.

In application, other problems arise. Solicitation complaints generally fall into two categories, those occurring in the parking lots of businesses, and those occurring on public rights of way. The Ordinance under consideration addresses, to some extent, public rights of way. With the exception of “aggressive” solicitation, the ordinance does not address private businesses. Private businesses have means to control their premises (for example: signage and trespass warnings). Policing private businesses could be both time consuming and problematic (from a constitutional perspective).

With respect to public properties, including rights of way, an outright ban cannot be instituted. Part of the ban problem lies with First Amendment analysis; however, another issue is selective permissibility. State law has already carved out an exception, and most municipalities, including Seguin, allow a couple of groups to use rights of way to raise funds. What remains is a restricted ability to limit solicitation based on concerns for public safety. The attached ordinance, part of which existed as the repealed section 90-5, attempts to reach a permissible balance.