

Bond Case Briefs

Municipal Finance Law Since 1971

MUNICIPAL ORDINANCE - KANSAS

City of Lawrence v. Gilmore

Court of Appeals of Kansas - August 2, 2013 - Slip Copy 2013 - WL 3970195

The Lawrence Police Department arrested some dude three times for violation of Lawrence, Kansas, Municipal Ordinance 16-803(4), which states in pertinent part:

“It shall be unlawful to ...

....

(4) Continue to obstruct traffic on any street, sidewalk, or other right-of-way of this City after having been ordered by a police officer to end such obstruction.

“For the purposes of this section, ‘obstruct traffic’ means to walk, stand, sit, lie, or place an object in a manner as to: block lawful passage by another person or vehicle, or to require another person or driver to take evasive action to avoid physical contact, or to block the entrance of any private or public building or establishment from any public street or sidewalk.”

Apparently, dude had something going on with the Weaver’s store, located at the intersection of Massachusetts and Ninth Street in Lawrence, as each arrest occurred at that location.

Dude argued that ordinance 16-803(4) was unconstitutionally vague on its face. He also argued that the lack of a scienter and mens rea requirement in the ordinance gave rise to vagueness concerning his First Amendment rights. Furthermore, it did not sufficiently define “evasive action.”

The void-for-vagueness doctrine requires that an ordinance define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.

“Here, the conduct prohibited by the ordinance is clear. An ordinary person can understand what conduct is prohibited because the term ‘evasive action’ is unambiguous based on its plain meaning and the term ‘obstruct traffic’ is clearly defined in the ordinance. Moreover, the term ‘evasive action’ does not lend itself to the same subjective interpretation as the term ‘annoying’ in the cases relied on by [the dude]. The clear and objective nature of the term ‘evasive action’ and the clearly defined term ‘obstruct traffic’ do not encourage arbitrary and discriminatory enforcement. All doubts must be resolved in favor of the ordinance’s validity, and it is our duty to uphold the ordinance rather than defeat it. This ordinance can be construed in a reasonable way that makes it constitutionally valid; therefore, the ordinance is upheld.”