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MUNICIPAL ORDINANCE - KANSAS

City of Wichita v. Trotter

Supreme Court of Kansas - August 12, 2022 - P.3d - 2022 WL 3330383

City charged defendant with violating municipal ordinances by operating an unlicensed after-hours establishment and operating an unlicensed entertainment establishment.

The Wichita Municipal Court found defendant guilty and ordered defendant to pay $200 fine and serve 12 months on nonreporting probation for after-hours violation, with underlying 90-day jail sentence, and ordered defendant to pay $200 fine for entertainment-licensing violation. Defendant appealed. On de novo review, the District Court dismissed the charges. City appealed. The Court of Appeals reversed and remanded with directions. Defendant petitioned for review, which was granted.

The Supreme Court held that:

- Defendant had standing to assert a First Amendment challenge;
- Defendant lacked standing to assert a Fourth Amendment challenge; and
- Licensing ordinances were overbroad in violation of First Amendment.

City ordinances requiring licenses for operation of after-hours establishments and criminalizing the operation of such establishments without a license were overbroad in violation of First Amendment right of assembly; although city had legitimate government interest in regulating late-night commercial activity, plain language of ordinances intruded into non-commercial gatherings during the hours from midnight until 6 a.m., including the right of assembly inside and around private homes.

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