



Indianapolis Metropolitan Police Department



LEGAL BULLETIN

FIRST AMENDMENT ACTIVITIES IN A PUBLIC FORUM

LB10-003

Due to resurgence in street preaching, non-commercial leafleting and other evangelical activities occurring in Indianapolis, the following is offered as legal guidance when encountering these situations. The opinions contained in this bulletin do not address commercial speech or advertising.

In General

The mission statement of the Indianapolis Metropolitan Police Department demonstrates commitment to the enforcement of laws while respecting individual rights. Those individual rights include the First Amendment to the U.S. Constitution, which allows citizens to express their views and beliefs in public forums—including public sidewalks, public parks and streets. This may take the form of speech, passing out leaflets and carrying signs, among other activities.

The distribution of leaflets (“leafleting”) is a practice in which citizens may participate in a public forum in nearly all circumstances. Leafleting is considered one of the least intrusive forms of free speech and is therefore more protected. Restrictions that may apply to megaphones or loudspeakers, large demonstrations or other potentially intrusive forms of speech, almost never apply to leafleting. *Generally, officers should not prohibit the distribution of leaflets in public forums, such as public sidewalks and public parks.* Of course, this does not prohibit officers from enforcing the City-County’s prohibition against throwing, scattering or casting about leaflets. (See Rev. Code § 361-501.)

Speech expressing one’s religious beliefs or speech protesting or supporting a particular point of view is not speech for an advertising purpose, and therefore, does not violate the noise ordinance. No permit is necessary when a citizen is utilizing an amplification device. Religious preaching and evangelizing are not deemed to be forms of advertising or soliciting for purposes of the First Amendment.

A citizen’s right to express one’s views and beliefs in a public forum does have limitations. A citizen may not occupy a public sidewalk, public park or street for the purpose of expressing views, including distributing leaflets, in a manner that acts as an unreasonable hindrance to safe passage or creates a physical obstruction to other citizens using the sidewalk or street. Blocking vehicular or pedestrian traffic would be a violation of Indiana Code section 35-42-2-4 (Obstruction of Traffic) and/or Revised Code section 411-102 (Unlawful assembling in streets or public places). However, *an officer should first warn a citizen that they are creating an unreasonable hindrance or a physical obstruction and give the citizen an opportunity to move before the citizen should be arrested or cited for such a violation.* Any arrest or citation should be based upon a reasonable belief that there is a physical obstruction, not just the possibility of an obstruction. Nothing in this bulletin precludes an officer from enforcing Revised Code section 987-106 dealing with transient merchants blocking or obstructing the streets or alleys.

In addition, the use of an amplifying device that is so loud as to unreasonably disturb the quiet and comfort of other dwellings, businesses or hotels can be a violation of the noise ordinance (Rev. Code § 391-301), particularly if noise occurs between 10:00 p.m. and 7:00 a.m. or if they are audible from more than seventy-five (75) feet from the sound source.

These restrictions on a citizen’s exercise of free speech should be used by an officer sparingly and only after the officer has utilized reasonable efforts to accommodate the citizen’s rights. The officer should



consider the time of day, location, and pedestrian or vehicular traffic situation before restricting a citizen's rights.

Special Events

Finally, regulation of a citizen's right to expression and the use of the City-County's noise ordinance and other ordinances pertaining to the public forum may differ during special events like the 500 festival parade, sporting events and other large outdoor events requiring permits. Stationary preaching, use of megaphones or loudspeakers, carrying signs and banners and other manners of speech may be limited more during these events when the limitations are reasonable and necessary in light of the terms of the permit.

Even during special events, however, leafleting is still permissible in areas freely accessible to the general public (i.e., everyone), so long as an individual is not acting as an unreasonable hindrance or creating a physical obstruction to other citizens using a crowded area of a street, a sidewalk or a park. In contrast, permittees who have been granted exclusive rights to a public forum by the City (i.e., are not freely accessible) and restrict entry via fences, gates and cover charges, admission tickets, special access credentials or other forms of licenses may limit or restrict leafleting inside their forum. Open public sidewalks adjacent to these limited access areas should still open to leafleting.

Further, officers should consult the IMPD Legal Advisor(s) and supervisors prior to particular events to discuss standards that should be applied. Supervisors are reminded that these guidelines must strictly be monitored and reinforced so as to minimize the possibility of violation an individual's First Amendment rights. Any and all questions should be directed to the Chief's Legal Advisor(s).