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December 4, 1991

Honorable Members of the Cambridge City Council

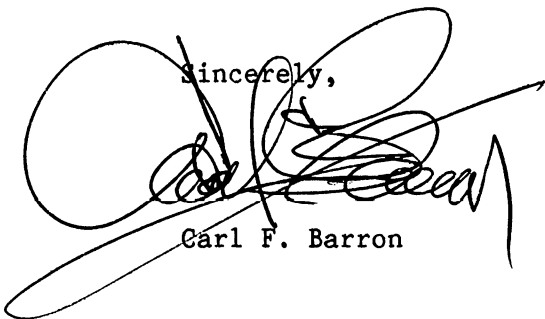
Re: Proposed Legislation on Drugs

Because of my great interest in protective legislation pertaining to matters referring to drugs, I have been successful in having legislation passed which outlawed the so-called "head shops" or drug paraphernalia. In addition, I have been extremely active in other matters concerning the possible curbing of the proliferation of drug activities within the City of Cambridge.

Attached, you will please find a copy of proposed legislation which I have discussed with Police Commissioner Perry L. Anderson, Jr. This is now enforced in the city of Seattle, Oregon.

Commissioner Anderson and myself would greatly appreciate a unanimous vote of the Cambridge City Council in favor of this proposed legislation. We feel that it is essential to obtain community support to help the Police Department realistically protect the schools and public areas within the City of Cambridge. This amendment will go far towards helping the Police Department enforce existing laws.

Sincerely,


Carl F. Barron

cc: Commission Perry L. Anderson, Jr.
Captain Henry Breen
James Hawkins, President, Chamber of Commerce

encl.

CFB/b.5891

Member of



important or vital for the East, North or South Precincts, where drug-free zones around schools were a far more important issue.

Funding of Community Groups

The various community groups received limited funding during their early years of operation. In late 1988, city Block Grant funds were provided to form the Neighborhood Crime and Justice Center (NCJC); approximately \$45,000 was provided at that time. (The Neighborhood Crime and Justice Center was the new name for the Neighborhood Crime Center which had been organized in late 1988.)

The NCJC was later awarded additional funding under Proposition 1, which was passed in 1989 and is described below. This funding then allowed the NCJC to provide staff support for the East and North Precinct Crime Prevention Councils, and similar groups in the West Seattle area. In addition, the NCJC provided such services as postage, grant writing, training and educational materials, copying, and general staff support necessary to carry on the efforts of the crime prevention councils.

An additional source of funds was provided by the State Omnibus Drug Bill passed during 1989, in which the state legislature made funds available to each county to organize around the concept of "drug-free zones." This concept defined a 1,000-foot radius around schools and bus stops where the penalties for transacting illegal drugs are doubled. An individual who was apprehended in that area would receive a much stiffer sentence than if apprehended elsewhere. In 1990, with active lobbying by the East Precinct citizens' groups, that bill was enhanced so that the drug-free zone would also include public parks and public transit shelter stations.

The South Seattle and the East Precinct councils also received some funds through grant applications, with the money targeted for organizing the citizens that were residing around these drug-free zones. The actual funding from these sources began in April of 1990. The portion of the work that's located in the City of Seattle is handled by the Crime Prevention Division of the Seattle Police Department. This division took the lead in organizing the citizens around these drug free zones. The Neighborhood Block Watch organizing section of the Crime Prevention Division also agreed to concentrate on neighborhoods that abut school zones.

The Public Safety Action Plan (Proposition 1)

In the spring of 1989, a comprehensive study of the SPD was conducted by a management consulting firm brought in by the city and the police department. Two representative members of the community were part of the steering committee for this study, and

94C § 32I

Historical Note

1987 Legislation

St.1987, c. 211, approved July 9, 1987, added subsec. (c).

United States Supreme Court

Drug paraphernalia, restrictions on sale where displayed with literature encouraging illegal drug use, see *Village of Hoffman, Est. v. Flipside, Hoffman Est.*, 1982, 102 S.Ct. 1186 [main volume] 455 U.S. 489, 71 L.Ed.2d 362, rehearing denied 102 S.Ct. 2023, 456 U.S. 950, 72 L.Ed.2d 476, on remand 688 F.2d 842.

Notes of Decisions

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Validity 1

1. Validity

Statute prohibiting possession of drug paraphernalia with intent to sell was not unconstitutionally vague; statute required proof of defendant's, not purchaser's, intention as to use of items sold, only established liability if defendant knew or reasonably should have known that item would be used unlawfully, and properly permitted jury to determine whether item was drug paraphernalia. *Com. v. Jasmin* (1986) 487 N.E.2d 1383, 396 Mass. 653.

§ 32J. Controlled substances violations in, on, or near school property; penalties

Any person who violates the provisions of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F or thirty-two I while in or on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school whether or not in session shall be punished by a term of imprisonment in the state prison for not less than two and one-half nor more than fifteen years or by imprisonment in a jail or house of correction for not less than two nor more than two and one-half years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of two years. A fine of not less than one thousand nor more than ten thousand dollars may be imposed but not in lieu of the mandatory minimum two year term of imprisonment as established herein. In accordance with the provisions of section eight A of chapter two hundred and seventy-nine such sentence shall begin from and after the expiration of the sentence for violation of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F or thirty-two I.

Lack of knowledge of school boundaries shall not be a defense to any person who violates the provisions of this section.

Added by St.1989, c. 227, § 2.

REGULATION OF TRADE

2. In general

Under statute prohibiting possession of drug paraphernalia with intent to sell, which authorized "court or other authority" to determine whether object was drug paraphernalia, term "other authority" included jury, and jury, not judge, was to determine whether item was drug paraphernalia, on instructions from judge which should include, among other considerations, reference to factors set forth in statute. *Com. v. Jasmin* (1986) 487 N.E.2d 1383, 396 Mass. 653.

3. Burden of proof

Possession of drug paraphernalia with intent to sell is specific intent crime; Commonwealth must show that defendant knew or reasonably should have known that object sold would be used unlawfully. *Com. v. Jasmin* (1986) 487 N.E.2d 1383, 396 Mass. 653.

4. Sufficiency of evidence

In prosecution for possession of drug paraphernalia with intent to sell, evidence that defendant was in smoke shop behind counter when shop was found to contain drug paraphernalia was sufficient to establish his possession of paraphernalia. *Com. v. Jasmin* (1986) 487 N.E.2d 1383, 396 Mass. 653.

5. Instructions

Fact that trial court stated to jury, in prosecution for unlawful possession of drug paraphernalia, that it "may consider" statutory factors in determining whether items were drug paraphernalia, while statute mandated that listed factors "shall" be considered, was not reversible error; charge as a whole adequately instructed the jurors to consider listed factors and other relevant factors. *Com. v. Jasmin* (1986) 487 N.E.2d 1383, 396 Mass. 653.

REGULATION OF TRADE

Historical Note

1989 Legislation

St.1989, c. 227, § 2, was approved 1989. Emergency declaration by the was filed on the same date.

§ 34. Unlawful possession of paraphernalia for marihuana

Cross References

Criminal assessments, see c. 280, § 6
For Standards of Judicial Practice re sentencing and other dispositions, promulgated by the District Court Department of Court, see note under Mass.R.Crim.P.

Notes of Decisions

Waiver of jury trial 17.5

5. — Possession, nature and elements of offense

A physician prescribing a controlled substance for himself without medical justification is not lawfully possess the prescribed substance. *Com. v. Perry* (1984) 464 N.E.2d 389, 808.

7. Search and seizure—In general

Warrantless search of defendant's person constitutionally justified by probable cause to believe he carried marijuana or other substances, coupled with exigent circumstances inherent in fact that any contraband would be unavailable to police unless then taken into their control; disagree. *People v. Evans*, 43 N.Y.2d 160, 401 N.Y.S.2d 810, 371 N.E.2d 528. *Com. v. Skea* (1984) 470 N.E.2d 335, 18 Mass.App. 685.

Permissible scope of warrantless search of defendant's person for marijuana or other controlled substances, based on probable cause search and exigent circumstances, was very broad and certainly included examination of the contents of a cellophane envelope discovered in the breast pocket of defendant's jacket. The envelope contained in the envelope a small quantity of marijuana, a small quantity of evidence in prosecution for possession of stolen goods, i.e., the diamonds, even though the discovery of the diamonds was not the basis of the search. *Com. v. Skea* (1984) 470 N.E.2d 335, 18 Mass.App. 685.

8. — Probable cause, search and seizure

Though police had probable cause to believe defendant had marijuana or other controlled substances, search incident to arrest of defendant was not justified. *People v. Evans*, 43 N.Y.2d 160, 401 N.Y.S.2d 810, 371 N.E.2d 528. *Com. v. Skea* (1984) 470 N.E.2d 335, 18 Mass.App. 685.

Consent Comm. # 5

S-127f

Comm. from Carl F. Barron, Putnam
Furniture Leasing Company, Inc.,
requesting the support of the City
Council for proposed legislation on
drugs.

In City Council,

December 9, 1991

Placed on file