NUISANCES;

CITIES OF THE THIRD CLASS:

Right of a city of the third class to declare a solicitor or canvasser a nuisance and to prevent him from entering upon private property.

November 25, 1940

11/27

FILED
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Hon. Alpha L. Burns
City Attorney
Marceline, Missouri

Dear Sir:

Your letter of November 22, 1940, is acknowledged, wherein you submit the following:

> "Marceline has in force an ordinance commonly known as GREEN RIVER ORDINANCE.
>
> The Kingdom of God People came in and distributed literature and accepted donations for it. Magazine agents came in and took subscriptions for future delivery of magazines, which magazines were printed in a foreign state.
>
> This ordinance prohibits soliciting of any character by knocking at the door etc. Declaring knocking at the door of a residence a nuisance. I would like your official opinion as to the validity of this ordinance under the constitution of the United States and of Missouri and under the laws of Missouri relating to third class cities * * * "

It is assumed that the ordinance involved is the same as the Green River, Wyoming ordinance (Town of Green

River v. Fuller Brush Company, 65 Fed. 2d 112, l.c. 113), which is as follows:

> "'Section 1. the practice of going in and upon private residences in the Town of Green River, Wyoming, by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise, not having been requested or invited so to do by the owner or owners, occupant or occupants of said private residences, for the purpose of soliciting orders for the sale of goods, wares and merchandise, and/or for the purpose of disposing of and/or peddling or hawking the same, is hereby declared to be a nuisance, and punishable as such nuisance as a misdemeanor.
>
> 'Section 2. The Town Marshal and Police Force of the Town of Green River are hereby required and directed to suppress the same, and to abate any such nuisance as is described in the first section of this ordinance.
>
> 'Section 3. Any person convicted of perpetrating a nuisance as described and prohibited in the first section of this ordinance, upon conviction thereof shall be fined in a sum not less than Twenty-five ($25.00) Dollars or more than One Hundred Dollars ($100.00), together with costs of proceedings, which said fine may be

> satisfied, if not paid in cash, by execution against the person of anyone convicted of committing the misdemeanor herein prohibited.

It is assumed for the purpose of determining the validity of the ordinance that such solicitors and transient vendors do not breach the peace or create a disturbance (See Prior v. White, 180 So. 347, 116 A. L. R. 1176, and White v. Town of Culpeper, 1 SE 2d 269) in the exercise of their vocation.

The Constitution of the United States, Sec. 8, of Article 1, provides:

> "The Congress shall have power:
> * * * * * * * * *
> To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;
> * * * "

While Amendment 1 provides:

> "Congress shall make no law respecting establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

And Section 1 of Amendment XIV provides in part as follows:

> "* * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Section 5, Article II of the Missouri Constitution provides in part as follows:

> "* * Liberty of Conscience. -- That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; * * * * "

Section 14, Article II of the Missouri Constitution provides as follows:

> "That no law shall be passed impairing the freedom of speech; that every person shall be free to say, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact."

And Section 30 of Article II of the Missouri Constitution provides as follows:

> "Due process of law.-- That no person shall be deprived of life, liberty or property without due process of law."

Marceline, a city of the third class, has the power, by virtue of Section 6803 R. S. Missouri, 1929, "to enact and ordain any and all ordinances not repugnant to the Constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order, the benefit of trade and commerce, and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same."

The principal question to be determined in settling the sufficiency of the ordinance is whether a municipality, in the exercise of its police powers, can forbid canvassing or soliciting, by declaring that it is a nuisance. See notes 88 A. L. R. 183 and 116 A. L. R. 1189, 13 Boston L. R. 98, 46 Harvard L. R. 154, 23 Minn. L. R. 88. However see 81 Pa. L. R. 331, in which it is said: "The constitutionality of this ordinance does not depend on whether or not the act prohibited is called a nuisance. Only two considerations are important. First, had the plaintiff a constitutional right to go onto all private residences for the purpose of selling its wares? Second,had those residents who desired salesmen to come to their homes a constitutional right that the salesman should come without previous invitation? * * * "

The power under which everything necessary to the protection of the health and comfort of the public may

be done is called the police power. This power as defined by Blackstone, concerns "The due regulation and domestic order of the Kingdom." (4 Bl. Com. 162.) The source of the police power of a municipal corporation is the state (State ex inf. Barker v. St. Louis Merchants Exchange, 269 Mo. 346, 190 S. W. 903; 43 C. J. 203), and although this police power primarily inhers in the state, the Legislature may delegate such power to the municipal corporations (McQuillin on Municipal Corporations. Vol. 3, Sec. 949; Jackson vs. Railroad, 157 Mo. 621, 58 S. W. 32).

However, to justify a municipal corporation under its police power, in regulating for the benefit of the public, it must appear first that the interests of the general public, and not that of a particular class, or individual, requires it, and, second, that the means are appropriate and not an unwarranted restraint on the private rights or property of individuals. (Lawton v. Steele, 152 U. S. 133, 14 Sup. Ct. 499).

A municipal corporation in exercising its police power cannot arbitrarily prohibit business, lawful in itself, and not injurious to the public health, safety or morals. (Hadacheck v. Sebastian, 239 U. S. 394, 39 Sup. Ct. 143.)

Under this regulatory power, however, it has been held that a municipal corporation can require persons in various pursuits to be licensed. Our Supreme Court in Ex parte Williams, 139 S. W. (2d) 485, held good an ordinance of the City of St. Louis prohibiting solicitation of funds for charitable purposes without first securing a permit from a charity solicitations commission, (See also St. Louis v. McCann, 157 Mo. 301, City of Washington v. Reed, 70 S. W. (2d) 121, 229 Mo. App. 1195.)

It must be noted a municipal corporation can not impose a license tax upon one soliciting within the city

for a corporation or company of a foreign state who ships articles pursuant to such orders from another state to the purchasers, since such transactions are in interstate commerce and are not subject to regulation by municipalities. Robbins v. Taxing District, 120 U. S. 489, 30 L. Ed. 694; California v. Reback, 204 S. W. 389.

As said in the recent case of Cantwell v. Conn., 84 Law. Ed. 836, which case involves the solicitation by members of a group known as Jehovah's Witnesses: "The state (and therefore a municipal corporation) is likewise free to regulate the time and manner of solicitation in general in the interests of public safety, peace, comfort and convenience. * * * "(Parenthesis and underscoring ours.) An ordinance forbidding canvassers from calling at unreasonable hours of the morning or night was held valid in Buffalo v. Schleifer, 21 N. Y. S. 913.

It is well settled that a city has the right under its police power to prevent and remove nuisances, Lux v. Milwaukee Mechanics Insurance Company, 15 S. W. (2d) 343, (Mo. Sup.), Waggoner v. City of South Gorin, 88 Mo. App. 25.

A nuisance is anything that worketh hurt, inconvenience or damage. 3 Blackstone Commentaries 216; Martin v. St. Joseph, 117 S. W. 94, 136 Mo. App. 316. There are two types of nuisances: Common or public nuisances, and private nuisances. Lademan v. Lamb Construction Co., 297 S. W. 184; State v. Springfield Gas Company, 204 S. W. 942.

In Schnitzer v. Excelsior Powder Mfg. Co., 160 S. W. 282, the distinction between a public and private nuisance is given as follows:

> "A nuisance is * public where it affects the rights enjoyed by citizens as part of

> the public, that is, the rights to which every citizen is entitled, whereas a private nuisance is anything done to the hurt, annoyance, or detriment of the lands, tenements, or hereditaments of another, and not amounting to a trespass; thus any unwarrantable, unreasonable or unlawful use by a person of his own property, real or personal, to the injury of another, constitutes a private nuisance. It will thus be observed that the difference between public and private nuisances does not depend upon the nature of the thing done but upon the question whether it affects the general public or merely some private individual or individuals, and so the same act or structure may be a public nuisance and also a private nuisance as to a person who is thereby caused a special injury other than that inflicted upon the general public; while, on the other hand, the fact that a nuisance injures a great many persons does not make it a public nuisance, where the injury is to the individual property of each person and not the general public as such.'"

In the case of a public nuisance an indictment lies to abate them and to punish the offenders, but an information also lies in equity to redress the grievances by way of injunction. State v. Springfield Gas Co., 204 S. W. 942; Mugler v. Kansas, 123 U. S. 672, 8 Sup. Ct. 303.

Private nuisances are merely actionable by the individual injured, either by way of injunction or suit

for damages. Smith v. Sedalia, 53 S. W. 907, 152 Mo. 283, 46 C. J. 647.

Under the general grant of power respecting nuisances the municipal corporations may declare a thing a nuisance which is one in fact. Walther v. Cape Girardeau, 166 Mo. App. 467, 149 S. W. 36. But it cannot declare by ordinance that something is a nuisance which is not so in fact. St. Louis v. Heitzberg, 141 Mo. 375, 42 S. W. 945; Kansas City v. McAleer, 31 Mo. App. 433. Under this rule a declaration on the part of the city that a particular thing is a nuisance is not conclusive unless the thing declared against is a nuisance per se at common law (Hisey v. Mexico, 61 Mo. App. 248, or has been declared such by statute, Allison v. Richmond, 51 Mo. App. 133).

As said by our Supreme Court in St. Louis v. Dreisoerner, 243 Mo. 217, 147 S. W. 998:

> "* * It is the settled law that a municipal corporation 'has no power by ordinance to declare that to be a nuisance which is not so in fact, or to suppress in part or in toto any business within its limits which is not a nuisance per se.' (St. Louis Gunning Co. v. St. Louis, 235 Mo. l. c. 147, et cases cited.) The clause of the ordinance upon which the information against defendant was framed refers to a calling which is not a nuisance per se, nor had it become such as carried on by defendant. Hence the city of St. Louis had no power under its charter to prohibit or abate it. It was a gainful occupation which the defendant was lawfully entitled to pursue in the manner which the evidence shows. The city had no specific power under its charter to regulate it, nor

> any authority so to do under the general welfare clause or as a police regulation.* * * "

To the same effect is Lux v. Milwaukee Mechanics Insurance Company, supra.

Therefore, under the rulings in this State, we may look to the thing which is declared to be a nuisance to determine if it is in fact such.

In so far as can be learned the appellate courts in this state have never passed upon the validity of ordinances of the type here involved and such ordinances have not been directly passed upon by the Supreme Court of our Nation. One must, therefore, consult the decisions of other forums for enlightment.

The same or similar ordinances have been passed upon by courts of last resort of other states and federal, circuit and district courts but with the unfortunate result of a direct conflict upon the subject and based upon diversified reasoning. As a consequence two lines of authority exist: First, wherein the ordinance is upheld as represented by its leader, Town of Green River v. Fuller Brush Company, 65 Fed. (2d) 112, 88 A. L. R. 177, a decision of the Tenth Circuit Court of Appeals; and, second, wherein the ordinance is held bad and represented by Prior v. White, a decision of the Supreme Court of Florida and reported in 180 So. 347, 116 A. L. R. 1176.

In the Green River case the ordinance involved is hereinbefore set out and the court stated that it was not doubted or questioned that the state had given the town, by statute, power to declare what shall constitute a nuisance and to abate and prevent the same and to inflict punishment on violators and said, l.c. 114:

> "* * * We think no distinction materially affecting the inquiry be-

tween solicitors and the others named in the ordinance can be found when its purpose and the annoyance which it was intended to prevent are borne in mind. We must therefore disagree with the learned District Judge in his conclusion that the ordinance was arbitrary and unreasonable.

"It has been uniformly held that while legislative authority may not arbitrarily interfere with private affairs by imposing unusual and unnecessary restrictions upon a lawful business, yet a considerable latitude of discretion must be accorded to the law making power, and if the regulation operates uniformly upon all persons similarly situated and it is not shown that it is clearly unreasonable and arbitrary, it cannot be judicially declared to be in contravention of constitutional right.
* * * *

* * * *

"We therefore conclude that the ordinance is an appropriate exercise of the police power.

"We are also of opinion that the ordinance and its enforcement would not encroach directly or indirectly on appellee's constitutional rights, nor interfere with interstate commerce. It does not purport to interfere in any respect with appellee's right or privilege of selling and transporting its wares in interstate commerce. It is free to carry on a business of that sort except to solicit orders in the

> manner specified in the ordinance, and obviously it could do so in many ways other than imposing itself upon and disturbing the residents of the town as prohibited by the ordinance. Public notice of the presence of its agents in the town for the purpose of taking orders for appellee's goods could be given stating when and where such agents could be found, samples of its wares seen, and their use explained and demonstrated, and orders taken. * * * * * * * "

It will be noted that this decision assumes that the actions of the canvassers constitute a nuisance but makes no distinction between a common or public nuisance and a private nuisance.

This same ordinance was later considered by the Wyoming Supreme Court in Green River v. Bunger, 50 Wyo. 52, 58 Pac. (2d) 456, in that case the Court reiterated the conclusion that no Federal constitutional provision was violated, and held that there was likewise no violation of state constitutional provisions declaring that "in their inherent right to life, liberty, and the pursuit of happiness all members of the human race are equal," and "absolute (and) arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic, not even in the largest majority." The court expressed the opinion that the practice of persons falling within the prohibition of the ordinance, of first calling at private residences to obtain an invitation and then making a second call to exhibit their merchandise, pursuant thereto, was a palpable evasion of the ordinance.

In the case of McCormick v. The City of Montrose, 99 P. (2d) 969, the Supreme Court of Colorado had under consideration an ordinance practically identical with the Green River Ordinance. And that court held an implied request or invitation to take the case out of the ordinance was not tenable, and said: (971)

> "* * * The ordinance was passed as a police regulation. It announced the public policy of Montrose to be to penalize soliciting in residences unless in response to request or invitation of the owners or occupants thereof. What defendant's employer, the Real Silk Hosiery Mills, had done lawfully as a practice before the ordinance was passed could not be construed as an implied request or invitation by the householders to continue such practice after they, through their city council, had passed an ordinance penalizing the practice. If solicitation had been carried on by defendant, or by the company through other agents, after the ordinance was passed without first securing a request or invitation, this was purely by sufferance of those who might have enforced it, and created no right in defendant or the company to continue to violate its provisions with impunity until notified that they might no longer do so. * * * * * * * * * * * *"

The court also pointed out that under the Statutes of Colorado the city had the right to license, tax, regulate, suppress and prohibit hucksters, peddlers, pawnbrokers, etc., and said, l. c. 972:

> "* * * * * Defendant's contention is in effect that since it is not a nuisance in fact it cannot be such in law and that if it is a nuisance in fact it is a private and not a

public nuisance and that the city can declare conduct to be a nuisance and provide for its suppression only if it amounts to a public nuisance. If the conduct is a nuisance in fact and public in character it follows even under the theory of defendant, that the city, in view of the statute, had power to pass the ordinance. Sec. 10, c. 163, '35 C.S.A., supra. However, the issue of whether the ordinance may be upheld or not need not be decided by determining, and we do not determine, whether the conduct inhibited by it is technically a nuisance or whether, if it is not, it becomes such by the legislative fiat of the city council that it is a nuisance. The Twentieth Amendment to the Constitution gives home rule cities the right to exercise police power as to local matters, possibly subject to the limitation that they may not exercise police power in such manner as to interfere with the state's exercise of its police power where it has elected to deal with the same subject matter. Denver v. Tihen, 77 Colo. 212, 235 P. 777. But no conflict is here involved, and we need not and do not concern ourselves either with the existence of a limitation or its extent, if there is one. Whether there shall or shall not be soliciting in or upon private residences within the city, at least until the state has seen fit to exercise its police powers with reference to it, is a matter of local concern only. If the city has the power to penalize the conduct declared by the ordinance to be a nuisance, we think that it is immaterial that it provided that such conduct shall first be given the name of nuisance, which defendant contends is not,

> and which may not be in fact, a fitting name. The real question is whether the city has the power to punish the proscribed conduct, not whether it has the right to name it."

And also,l. c. 974, the court said:

> "* * * * Defendant concedes that, there being no prohibitory ordinance, the consent may be withdrawn by placing on the premises 'the customary warning sign "no solicitors allowed."' Conversely, there being such an ordinance, a request and invitation might effectively be given by displaying a sign, 'Solicitors Welcome.' * * * *"

The Court of Appeals of Illinois in Saxton v. City of Peoria, 75 Ill. App. 397, upheld an ordinance making it subject to a fine for a person to enter any private premises against the consent of the owner or occupant thereof.

On the other hand in the case of Prior v. White, supra, the Supreme Court of Florida held an ordinance reading as follows (l. c. 1178):

> "'Section 1. The practice of being in and upon private residences in the City of New Smyrna, Florida, by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise, not having been requested or invited so to do by the owner or owners, occupant or occupants of said private residences, for the purpose of soliciting orders for the sale of goods, wares, and merchandise and/or for the purpose of disposing of and/or peddling or hawking the same, is hereby declared a nuisance and punishable as such nuisance as a misdemeanor.'"

an unjustifiable exercise of the police powers of the city and depriving persons engaged in such business of their constitutional rights, and the court said (l. c. 1185):

> "It is contended by the respondent that the general 'police powers' conferred upon the municipality by the Legislature are sufficient to justify the passage of such an ordinance."

And further said (l. c. 1187, 1188 and 1189):

> "Unless the householder manifests externally in some way his wish to remain unmolested by the visits of solicitors, it would seem that the solicitor may take custom and usage as implying consent to call where such custom and usage exist. 31 Michigan Law Review, 543. Invitation may be implied from custom, usage or conduct. Lawrence v. Kaul Lumber Company, 171 Ala. 300, 55 So. 111. And it has been held that a license may be implied to enter the house of another, at usual and reasonable hours, and in a customary manner for any of the common purposes of life. Lakin v. Ames, 10 Cush., Mass., 198. See, also, section 167 of Restatement of Torts.
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> "Tested by this rule, the act sought to be prohibited by the ordinance is manifestly not a public nuisance and therefore may not be punished as a crime or misdemeanor. It is an old common-law principle that an indictment will lie only for a public nuisance, not for a private nuisance. See, in this connection, Pennsylvania Coal Company v. Mahon, 260 U. S. 393, 43 S. Ct. 158,

67 L. ed. 322, 28 A. L. R. 1321, and
46 C. J. 648; 2 McQuillin, section 677.

* * * * * * * * * * * * * * * * * * * *

"It appears from the evidence in this case that the house to house solicitation of business, such as was engaged in by this petitioner, constitutes what has become an ordinary, usual, and lawful method of doing business, and our conclusion is that a municipality cannot, by an attempted exercise of its general police powers, prohibit such method of doing business, except perhaps as to householders who have in some manner indicated that solicitation of business, or certain designated types of business, at their homes, is not allowed.

* * * * * * * * * * * * * * * * * * * *

"For the reasons above pointed out, we hold that, as applied to this petitioner, and the act or practice of soliciting orders for the sale of goods, wares, and merchandise, the ordinance is unreasonable and invades the petitioner's constitutional rights. * * * * * * * * * * * * * * * *"

Virginia, Maryland, South Carolina, Oklahoma and Nebraska, in addition to Florida, hold that the Green River ordinance is invalid and assign in the main as their reason for so holding that the municipality has no power to prohibit as a public nuisance the uninvited entrance upon private property by canvassers and peddlers because such entrance, if a nuisance, is not a public nuisance in fact. See Prior v. White, 180 So. 347, 132 Fla. 1; White v. Town of Culpeper, 172 Va. 630, 1. S. E. (2d) 269; Jewel Tea Co. v. Bel Air, 172 Md. 536, 192 A. 417; City of Orangeburg v. Farmer, 181 S. C. 143, 186 S. W. 783; Jewel Tea Company v. City of Geneva, 291 N. W.

(Nebr.) 664, and City of McAlester v. Grand Union Tea Co., (Okla) 98 P. (2d) 924. In the last case it is said (l. c. 926):

> "The courts have frequently held a municipality without authority under a general grant of police power to make penal a private trespass."

While in the City of Geneva case the Supreme Court of Nebraska said (l. c. 670):

> "A municipality has no power, under its general authority, to prohibit as a nuisance an occupation which is not a nuisance in fact. Ex parte Harris, 97 Tex. Cr. R. 399, 261 S. W. 1050, 32 A. L. R. 1356.
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> "Nor can the police power be exerted arbitrarily to interfere with private business, or to prohibit lawful occupations, or to impose unreasonable or unnecessary restrictions upon them under the guise of protection of the public. Corporation of Toronto v. Virgo, 73 Law Times Rep. 449."

It is interesting to note the Green River case did not take into account the case of Real Silk Hosiery Mills v. Richmond, 298 Fed. 126, the decision in Williams v. Arkansas, 217 U. S. 79, 54 L. Ed. 675, and the opinion in the case of Lovell v. Griffin, 303 U. S. 343, 82 L. Ed. 949.

In the Richmond case, supra, the District Court considered an ordinance preventing trespass, annoyances and disorder of solicitors who rang doorbells or knocked at doors of dwelling places bearing a sign "No peddlers," and said:

> "Where the household permits solicitors, the city cannot forbid."

The opinion also held that the application of the ordinance was an unwarranted interference with interstate commerce and violated the due process of law provision of the Constitution.

In Williams v. Arkansas, 217 U. S. 79, a statute of the State of Arkansas prohibited soliciting business or patronage on railway trains or premises of common carriers for hotels, physicians and bathhouses, and this statute was held constitutional by the United States Supreme Court and not contrary to the due process of law but a valid exercise of the police powers of the state. It is possible that this decision is distinguishable from most similar city ordinance cases upon the theory that the state has the plenary power and absolute power to legislate on certain subjects but the authority of a municipal corporation is restricted to that delegated to it by the Legislature.

The Supreme Court of the United States in Lovell v. Griffin, 303 U. S. 343, 82 L. Ed. 949, held, where a member of the Kingdom of Jehovah was arrested under the terms of an ordinance that prohibited the distribution of printed matter by sale or gratuitously without a permit of the city manager, such ordinance unconstitutional, and said:

> "The ordinance is comprehensive with respect to the method of distribution. It covers every sort of circulation 'either by hand or otherwise.' There is thus no restriction in its application with respect to time or place. * * * *
>
> "We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. * * * * * *

> "The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. * * * * *"

A state statute that required one to secure permission from the secretary of the welfare commission before soliciting for religious, charitable and philanthropic causes, and left the determination of the granting of a permission to the secretary was held unconstitutional in the recent case of Cantwell v. Connecticut by the United States Supreme Court on May 20, 1940 (84 L. Ed. 836). The defendant, a member of "Jehovah's Witnesses," who had not secured a permit met two persons on the street and played a phonograph record to them, and it was held (l. c. 839):

> "* * * * * No one would contest the proposition that a state may not, by statute, wholly deny the right to preach or to disseminate religious views. Plainly such a previous and absolute restraint would violate the terms of the guaranty. It is equally clear that a state may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment. The appellants are right in their insistence that the Act in question is not such a regulation. If a certificate is procured, solicitation is permitted without restraint but, in the absence of a certificate, solicitation is altogether prohibited.
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> "* * * * * Here we have a situation analogous to a conviction under a

> statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application.
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> *
>
> "Although the contents of the record not unnaturally aroused animosity, we think that, in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guaranties, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question."

Conclusion

It is the opinion of this Department that an ordinance that declares the uninvited entrance upon private property for the purpose of soliciting or canvassing to be a nuisance is under the greater weight of authority, and we believe the better and more sound rule, unconstitutional and void. In view of the attitude of the Missouri Appellate Courts, we believe that conclusion would be reached by our courts of last

resort if the question were presented to them.

Respectfully submitted,

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APPROVED:

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VT-AO'K/RW