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LISTSERV

BY: BRAD CUNNINGHAM,
Municipal Attorney, Lexington, South Carolina

A Different Kind of Holiday Season?

Much of the discussion on the Listserv and Water Cooler this year revolves around the around the challenges to local governments as they scramble to protect their citizens and employees while continuing to provide essential services.

One of the more polarizing issues in many places is the subject of "Mask Mandates." Some states think they can't pass them and send that responsibility down to the local governments. My Town of Lexington is struggling with that issue.

A local Councilmember made the decision to ask folks on Social Media what they thought about a potential "mask ordinance," and the responses were amazing. The Mayor and Council were called "stupid" by *everyone* who responded. Some said they were stupid for considering it. Others said they were stupid for not having done it already. Of course, you can never make *everybody* happy. But is it too much to ask to make *somebody* happy? Anybody?

It is a tough time for municipal employees. While other professions are praised for their "heroic" actions, municipal employees are plugging along, ignored or insulted as they continue their efforts so the "heroes" can get their garbage picked up, take a shower, and flush the toilet, I have seen several instances in surrounding communities of folks providing lunches and/or supplies for teachers, doctors nurses, and other professionals. Yes, these are well deserved of course.

But does anyone remember the utilities worker who got up at 4 a.m. because of a water line break, and had it fixed by 6 a.m. so the rest of us could take a shower before work? Does anyone remember the sanitation worker who rode in the back of the truck in the cold rain so the rest of us could have clean streets and offices? Shout out here to the Utilities Department, Sanitation Department, Fire Department and Police Departments everywhere who seem to get little credit for their work that allows the rest of us to go on during these trying times.

Is there a worse time of year than the holidays for a pandemic and its health-related restrictions? The elderly who live alone are now prevented in many instances from even getting the few visits they might have gotten in an otherwise "normal" year. Holiday party catering business is in the doldrums. "Virtual" parties are held instead, where people sit in front of a computer eating and drinking by themselves. One guy has a steak. The other has a Big Mac. There may or may not be any football games to watch. If there are, how do you watch a ball game with pals virtually?

Instead of Merry Christmas, Happy Holidays, Happy Hanukkah, Kwanzaa, and so on, the most popular phrases recently uttered were "Can you see me? Can you hear me? Am I coming through? Turn your sound up Oops, my microphone was off. My video was off. My computer was down. The internet is down."

Back to municipal government operations. I took a trip around the Midlands of South Carolina. And I observed a little of what the typically busy holiday shopping and partying season was like. Many things were handled "differently" this year. I will give several examples. As usual, I am not taking a right or wrong side on these issues. I am only passing on some observations.

I attended a Christmas parade in a local municipality. Only one band performed. They had masks on, and those who played an instrument pulled the mask down just far enough to be able to play. Horns had black "covers" stretched over the bell for, I suppose, the purpose of reducing the chance of saliva droplets getting into the air. Spit valves were taboo.

Folks on floats stood their distance. There was no candy distributed… No politicians shaking hands… No free apple cider and hot chocolate at the churches along the route. The onlookers all wore masks and stayed apart like they were strangers. Last but not least, Santa Claus rode the final float *sans* elves. I wondered how he was going to make it all the way around the world in one night with no help? Would he even be allowed to go? Aren't Santa and the elves *essential*?

Some parades were actually held virtually, with attendance discouraged. Community tree lightings were broadcast on You Tube with nobody actually present. There were no Christmas carols, cocoa or candy canes.

A trip to the shopping mall after the parade revealed plenty of available seating in the food court. Perhaps the saddest sight of all was the grand Santa Claus house at the center of the mall decorated in all its typical glory. It was beautiful. But inside sat Santa Claus wearing a mask with his head

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1158, 1160 (5th. Cir. 1986)); (*See also* Young v. Green, 2012 U.S. Dist. Lexis 115027, 2012 WL 3527040, *4 (S.D. Tex. Aug. 15, 2012)). ("[C]ase law holds that a bystander who witnesses a police action, but who is not himself or herself the object of that action, cannot recover for resulting emotional injuries under § 1983, although there may be such a claim under state tort law. There is no constitutional right to be free from witnessing police action, apart from the question of whether that action physically injured the target of that action.").

59. *Id.*

60. Cole v. Hunter, 2014 U.S. Dist. Lexis 8796, 2014 WL 266501 (N.D. Tex. Jan. 24, 2014) (mem.op.) (Judge O'Connor's ruling on the motion to dismiss the bystander claims was not challenged on appeal. Other issues in the district court's opinion at the summary judgment stage were appealed). Cole v. Hunter, 68 F.Supp. 3d 628 (N.D. Tex. 2014); aff'd in part, rev'd in part; Cole v. Carson, 802 F.3d 752 (5th Cir. 2015), vacated and remanded; Hunter v. Cole, 137 S.Ct. 497, 196 L.Ed.2d 397 (2016), reinstated in part, remanded in part; Cole v. Carson, 905 F.3d 334 (5th Cir. 2018), rehearing en banc granted, 915 F.3d 378 (5th Cir. 2019) (en banc) cert. denied, _ S. Ct. _, 2020 WL 3146695 (June 15, 2020) (mem.).

61. *Id.* at *56. (*See* generally Grandstaff v. Borger, 767 F. 2d 161, 172 (5th Cir. 1985)); (Coon v. Ledbetter, 780 F. 2d 1158, 1160 (5th Cir. 1986)).

62. Dantzler v. Hindman, 2017 WL 6403043 *3 (W.D. Tex. 2017).

63. *Id.* at *13 (citing Khansari v. City of Houston, 14 F. Supp. 3d 842, 862 (S.D. Tex. 2014)(mem. op.)); (Grandstaff v. City of Borger, Tex., 767 F. 2d 161, 172 (5th Cir. 1985)); and (Coon v. Ledbetter, 780 F. 2d 1158, 1169 (5th Cir. 1986)).

Listserv *cont'd from page 35*

resting on his hand propped up by the arm of the chair. No children on his lap… Not one single child in line for their rite of passage. He looked terribly lonely, and I couldn't help but feel if this wasn't a harbinger of things to come for many folks this holiday season. Perhaps the only ones busy were Amazon, the Post Office and UPS?

A trip down the "not so busy" freeway to a neighboring "University City" showed some interesting sights. Final Exams were in session, but the library was empty. Classrooms were empty. Wait! Didn't I say exams were in session? Yes, but all the students were quietly huddled up in their dorm rooms by themselves, eyes glued to a computer to partake in exams online… Online… Just like every other activity in which they engaged this semester.

Those who had unfortunately tested positive for "it" were all shuffled off to the same dorm which was the designated quarantine location. They were not allowed to leave their rooms *at all* and food was shoveled under the door like they were prisoners in confinement. The normally active college campus was without song, without voice. To quote Paul Simon, I saw "People talking without speaking, People hearing without listening. People writing songs that voices never share, and no one dared, disturb the sound of silence." I sure would hate to be a college freshman this holiday season… Miles away from home for the first time… Huddled in a room and told to go nowhere…

An area medical professional reports there are waiting lists to virtually every counselor and psychologist in the area because folks are in a state of depression and anxiety. I shake my head.

What does all of this possibly portend for municipal governments? More calls for EMS… Less traffic… Hopefully fewer accidents… Less Hospitality Tax revenue generated by restaurants… Less gas tax revenue because nobody is traveling. Meanwhile, we must continue to provide services and go about business as usual with our "essential" tags around our necks. Very thankfully, though, because, it seems essential may be better than the alternative.

Am I am intending to be a fountain of gloom? No sir. I also observe the positive differences and behaviors and attempt to participate. Instead of $10, I handed $20 to the homeless fellow I see outside the sandwich shop every day. I saw folks putting $40 in the Salvation Army kettle at Wal Mart. In the face of difficulties, I see plenty of folks doing the best they can and enjoying themselves. I see people being thankful for the few opportunities they have to celebrate in a small way this year.

As municipal employees perhaps we should do the same. We have work, and it won't slow down. We are essential and we are needed. We are thankful for what we have. Let's all enjoy it. Wait a minute… Isn't this the point of the holidays? For those of us who are healthy, working, solvent and in touch with loved ones, maybe this is shaping up to be the BEST holiday season we have ever had?

I realize this will be read following Christmas and as the New Year begins. 2020 has been a difficult year for all of us. As municipal employees, let's strive to make 2021 a rebound year. Let's all work harder for our citizens. Let's strive to be positive rather than negative. Let's give more, laugh more, love more and pray more. We're being watched. Let's set the tone for 2021. Let's be leaders and show them how it is done!

The prosecution rests, your honor… ML