International Municipal Lawyers Association
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IMLA NEWS
Issue 17 – October 3, 2019

## Signs: Ordinance's Size and Location Limitations are Legitimate Aesthetic Parameters

## *Leibundguth Storage & Van Service, Inc. v. Village of Downers Grove*, No. 16-3055 (7th Cir. Sept. 25, 2019).

**Although a locality's sign ordinance likely included impermissible content based provisions, those provisions were not at issue in this case, which only implicated the ordinance's aesthetically-justified size and placement limitations.**

Downers Grove, Illinois ("Village") has codified a sign ordinance ("Ordinance") which includes various restrictions on the placement and size of signs. The Ordinance prohibits "any sign painted directly on a wall" and for buildings closer than 300 feet to a street allows a maximum of 1.5 square feet per linear foot of frontage. Although businesses are generally allowed only one sign, those that face both a street and a railroad are permitted an extra sign on the railroad side. Various types of signs are exempt from the Ordinance's restrictions, including holiday decorations, temporary signs for personal events such as birthdays, "[n]oncommercial flags,"political and noncommercial signs not exceeding 2 square feet, "[m]emorial signs and tablets" and other about a dozen more.

Leibundguth Storage & Van Service, Inc. (Leibundguth) occupies a building which adjoins a railroad. Its railroad-facing signage, seen by passing commuters and responsible for upwards of 20% of its business, according Leibundguth, is 10 feet high by 40 feet in length—far larger than the 159 square feet permitted to Leibundguth under the Ordinance. When the Village attempted to enforce the Ordinance, Leibundguth

sued, arguing that the Ordinance's numerous content-based exceptions ran afoul of *Reed*. But because the principal topic of the Ordinance is commercial speech, the district court concluded that *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980), rather than *Reed* supplied the relevant rule, and it found the Ordinance valid.

The Seventh Circuit came to the same result, but did not agree with the lower court's analysis. Strongly implying that the Ordinance's content-based differentiation might not survive scrutiny in an appropriate case, it declined to perform such analysis here. The Ordinance, as applied to Liebundguth, satisfied constitutional parameters:

> A limit on the size and presentation of signs is a standard time, place, and manner rule, a form of aesthetic zoning. The Supreme Court has told us that aesthetic limits on signs are compatible with the First Amendment.
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> The Village's ordinance contains content discrimination, but as we have explained that discrimination does not aggrieve Leibundguth. And the parties agree that enforcement of the sign ordinance leaves open plenty of ways to communicate. Advertising does not depend on applying paint to brick— and although 159 square feet of signage on Leibundguth's building is less than it prefers to use, 159 square feet is still a large sign. Leibundguth also is free to advertise in print or over the Internet. The parties dispute how the Village's ordinance applies to the signs on two other faces of Leibundguth's building, but none of the possibilities poses a constitutional issue distinct from the ones we have already addressed. What we have said is enough to show that the ordinance, as applied to Leibundguth, does not violate the First Amendment.

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