

STATE OF MICHIGAN

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UNIFORM TRAFFIC CODE: Soliciting on public streets and highways.

MICHIGAN VEHICLE CODE:

CONST 1963, ART 7, § 29

VILLAGES:

Section 676b, MCL 257.676b, of the Michigan Vehicle Code, MCL 257.1 *et seq.*, prohibits a person from soliciting contributions, including contributions on behalf of civic or charitable organizations, from the occupants of vehicles if the person soliciting blocks, obstructs, impedes, or otherwise interferes with the normal flow of vehicular traffic upon a public street or highway in this State. No other statute or rule authorizes or permits the authorization of a person to engage in this activity.

Rule 713, Mich Admin Code, R 28.1713, of the Uniform Traffic Code, prohibits a person in the improved portion of a roadway from soliciting contributions in support of a civic or charitable organization from the occupant of any vehicle. Mich Admin Code, R 28.1713.

Opinion No. 7291

July 29, 2016

The Honorable Phil Pavlov
State Senator
The Capitol
Lansing, MI 48909

You have asked whether charitable and civic organizations may solicit contributions in public roadways.

Although your request did not identify a particular organization, this office is aware that members of various charitable and civic organizations sometimes solicit contributions from persons occupying vehicles while in a public roadway. Your request and information included with it note that the Village Council for the

Village of Sebewaing (Village), Huron County, decided it would no longer permit organizations to do so. The Village cited a number of laws to support its decision, including Rule 28.1713 of the Uniform Traffic Code. Mich Admin Code, R 28.1713.¹

The Michigan Constitution provides, in pertinent part, that “[e]xcept as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to” those local units of government. Const 1963, art 7, § 29. The Constitution further provides that each city and village “shall have the power” to “adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law.” Const 1963, art 7, § 22.

In turn, the Legislature in both the General Law Village Act, 1895 PA 3, MCL 61.1 *et seq.* (applicable to Sebewaing as a general law village) and the Home Rule Village Act, 1909 PA 278, MCL 78.1 *et seq.* (applicable to home rule villages), authorizes villages to “adopt” the Michigan Vehicle Code, 1949 PA 300, MCL 257.1 *et seq.* See MCL 66.4(2) and MCL 78.23(i), both of which provide that “a village may adopt . . . the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923[.]”² Similarly, MCL 257.951 provides that “[a] city, township, or village may adopt by

¹ The Uniform Traffic Code Act, 1956 PA 62, MCL 257.951 *et seq.*, authorizes the Director of the Department of State Police to promulgate, through administrative rules, a uniform traffic code.

² Cities and townships may also adopt the Michigan Vehicle Code as an ordinance under MCL 117.3(k), and MCL 41.181(3), respectively.

reference a code or ordinance for the regulation of traffic within cities, townships, and villages that has been promulgated by the director of the department of state police.” Here, the Village has done both – adopting by reference the Michigan Vehicle Code, see Ordinance § 70.15, and the Uniform Traffic Code, see Ordinance § 70.01.³

The Michigan Vehicle Code sets forth requirements for the licensure and regulation of drivers and vehicles using publicly maintained streets and highways and, to a lesser extent, the use of those streets and highways by pedestrians. “The purpose of the Vehicle Code is to protect citizens and vehicles while on the public highways.” *People v O’Neal*, 198 Mich App 118, 122 (1993) (internal citation omitted). As pertinent here, Chapter 6, Obedience to and Effect of Traffic Laws, MCL 257.601 through 257.750; provides that the chapter applies “uniformly throughout this state and in all political subdivisions and municipalities in the state.” MCL 257.605(1).

Section 676b of the chapter provides in subsection (1) that:

A person, without authority, shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street or highway in this state, by means of a barricade, object, or device, or with his or her person. This section shall not apply to persons maintaining, rearranging, or constructing public utility facilities in or adjacent to a street or highway. [MCL 257.676b(1) (emphasis added).]

³ The Village’s ordinances are available online at [http://library.amlegal.com/nxt/gateway.dll/Michigan/sebewaing_mi/villageofsebewaingmichigancodeofordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sebewaing_mi](http://library.amlegal.com/nxt/gateway.dll/Michigan/sebewaing_mi/villageofsebewaingmichigancodeofordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:sebewaing_mi), (accessed July 6, 2016).

A violation of this statute constitutes a civil infraction. MCL 257.676b(2). This section is broadly worded and prohibits a person from using his or her body in a way that interferes with the normal flow of traffic on a public street unless authorized to engage in the activity. A person soliciting contributions on behalf of a charitable organization from the occupants of vehicles on public streets or highways may fall within this prohibition. So too may any other person soliciting contributions, including panhandlers or persons attempting to engage in commercial activities, such as selling goods or offering services to vehicle occupants.

The interpretation of statutory language begins with the plain language of the statute. *Driver v Naini*, 490 Mich 239, 246-247 (2011). “We must give effect to the Legislature’s intent, and the best indicator of the Legislature’s intent is the words used.” *Johnson v Pastoriza*, 491 Mich 417, 436 (2012). Additionally, when determining this intent, effect must be given “to every word, phrase, and clause in a statute” to “avoid an interpretation that renders nugatory or surplusage any part of a statute.” *Hannay v Dep’t of Transp*, 497 Mich 45, 57 (2014) (quotation marks and citation omitted).

As used in subsection 676b(1), the term “person” means “every natural person, firm, copartnership, association, or corporation and their legal successors.” MCL 257.40. And the terms “highway or street” mean “the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.” MCL 257.20. Because the Michigan Vehicle Code does not define the terms “block, obstruct, impede,” or

“interfere,” these terms may be given their ordinary meaning. *Oakland Co Bd of Co Rd Comm’rs v Michigan Prop & Cas Guar Ass’n*, 456 Mich 590, 604 (1998). In that case, “[r]eference to dictionary definitions is appropriate.” *Jordan v Jarvis*, 200 Mich App 445, 451 (1993).

These terms share similar meanings. For example, the terms “obstruct” and “impede” are incorporated into the definition of “block” as “anything that stops movement or progress; obstruction, obstacle, or hindrance; . . . to impede the passage or progress of; obstruct.” Webster’s New World Dictionary (3rd ed, 1988). And the word “interfere” means “[t]he act or an instance of hindering, obstructing, or impeding.” The American Heritage College Dictionary (3rd ed, 1997).

Again, your request does not include specific facts. But it is reasonable to conclude based on the plain language of the statute that the presence of a person *in* a street requesting contributions from vehicle occupants would ordinarily block, obstruct, impede, or otherwise interfere with the normal flow of traffic on that street. Similarly, a person standing near a street or highway, for instance on a curb, requesting contributions from an occupant of a vehicle in the street or highway could very well block, obstruct, impede, or otherwise interfere with the normal flow of traffic upon that street or highway by means of his or her person. MCL 257.676b(1). *Id.* Whether this is true will depend upon the particular facts and circumstances. With respect to cities, villages, and townships, it is the “duty” of local law enforcement to “enforce the street traffic regulations . . . and all state

vehicle laws that are applicable to street traffic” in the city, village, or township. See Mich Admin Code, R 28.1101.

Thus, with respect to the Village of Sebewaing, local law enforcement officers would determine in the first instance whether the activity violates the statute. If the activity violates the statute under the particular facts, the activity would be prohibited if the person was otherwise “without authority” to do so. Because this activity is generally prohibited by statute, the “authority” to engage in the prohibited conduct must also be found in the law. See, e.g., *Attorney General ex rel Brotherton v Common Council of City of Detroit*, 148 Mich 71, 79 (1907) (“If a prohibitory constitutional provision, general in its character, is subject to exceptions, those exceptions must be found in the Constitution.”).

There are certain statutes and rules that authorize persons to engage in activity in a street or highway. For example, under the Uniform Traffic Code, police officers and firefighters are authorized to direct traffic. See Mich Admin Code, R 28.1102 and 1103; see also MCL 257.602. The Michigan Vehicle Code provides that workers “performing construction, maintenance, surveying, or utility work within a work zone may direct traffic within that work zone” if authorized by state or local officials. MCL 257.611a(1). Similarly, school crossing guards may stop traffic while on duty at their assigned crossings. MCL 257.613b. Subsection 676b(1) itself exempts persons working on public utility facilities. MCL 257.676b(1). And pedestrians may walk in a highway if no sidewalks are available, MCL 257.655, or may cross roadways in a designated place and manner, Mich Admin Code,

R 28.1702 and 28.1705. But this office found no statute or rule expressly authorizing a person to request contributions from the occupants of vehicles while in, near, or moving upon a street or highway.

The closest statute is MCL 257.676a(1)--(2), which provides, in relevant part, that “a person” may request a “permit” from the Michigan Department of Transportation (MDOT) to “sell[] or offer[] for sale, or display[] . . . for sale, goods, wares, produce, fruit, vegetables, or merchandise . . . *within the right-of-way of a state trunk line highway.*” (Emphasis added). MDOT “may issue” the permit “if the permitted activities *do not create an unsafe situation and do not interfere with transportation* along the state trunk line highway.” MCL 257.676a(2) (emphasis added). In addition, “[a]s a condition of issuing a permit . . . [MDOT] shall require the municipality having jurisdiction over the site to pass a resolution authorizing the activities . . . and may require that the municipality . . . agree to enforce compliance with the permit.” *Id.*

This statute provides a limited opportunity for a person to ask MDOT for a permit to sell various goods or merchandise “within the right-of-way”⁴ of a “state

⁴ Highways are generally 66 feet in width, MCL 221.20, including improved and unimproved portions, all of which would be in the right-of-way. See MCL 257.20 (“highway” means “the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.”); *Laug v Ottawa Co Road Comm’n*, 37 Mich App 757, 763-764 (1972) (describing “66 foot right-of-way”).

trunk line highway”⁵ so long as the activity “does not create an unsafe situation” or “interfere” with travel, and the activity is also approved by the local municipality. In that case, this statute acts as an exception to subsection 676b(1) by providing the person with “authority” to engage in activity that may otherwise violate subsection 676b(1).

Accordingly, the question arises whether soliciting contributions for charitable and civic organizations falls within the activities for which a person may request a permit under subsection 676a(1). Again, your request did not include facts regarding the nature of the solicitation at issue. But under a plain reading of the statute, the solicitation and receipt of a monetary contribution for a charity would not qualify as an offer for, or the “sale” of, “goods, wares, produce, fruit, vegetables, or merchandise.” MCL 257.676a(1). The term “sale” is not defined in the Motor Vehicle Code but may be understood to mean “[t]he transfer of property or title for a price.” Black’s Law Dictionary (7th ed); see also MCL 440.2106(1) (a “sale,” as defined by the Uniform Commercial Code, is “the passing of title from the seller to the buyer for a price”). The receipt of a monetary contribution with no exchange of goods or merchandise would not constitute a “sale” for purposes of subsection 676a(1).⁶ This statute, therefore, does not authorize a person to request

⁵ State trunk line highways are “roads, streets, and highways, either located within or outside the limits of incorporated cities and villages, now or hereafter constituted state trunk line highways under the laws of this state.” MCL 247.651. State trunk line highways are generally under the control of the State.

⁶ Even if some other manner of soliciting contributions for charitable or civic contributions might fall within the statute, it would be subject to the limitations contained therein, i.e. only within the right-of-way of a state trunk line highway and as permitted by MDOT and the local municipality.

monetary contributions from the occupants of vehicles while in, near, or moving upon a street or highway in avoidance of subsection 676b(1).

Finally, while the Motor Vehicle Code authorizes “local authorities”⁷ to regulate in certain areas with respect to streets or highways under the jurisdiction of the locality, MCL 257.606, none of the permitted areas of regulation include authorizing a person to request contributions from the occupants of vehicles while standing near, in, or moving upon a street or highway so as to avoid the application of subsection 676b(1). MCL 257.676b(1).⁸

It is my opinion, therefore, that section 676b, MCL 257.676b of the Michigan Vehicle Code, prohibits a person from soliciting contributions, including on behalf of civic or charitable organizations, from the occupants of vehicles if the person soliciting blocks, obstructs, impedes, or otherwise interferes with the normal flow of vehicular traffic upon a public street or highway in this State. No other statute or rule authorizes or permits the authorization of a person to engage in this activity.

In addition to section 676b of the Michigan Vehicle Code, this activity may also be prohibited by the Uniform Traffic Code. As noted above, the Village adopted the Uniform Traffic Code, which was promulgated by the Director of the

⁷ The term “local authorities” means “every municipal and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.” MCL 257.27.

⁸ Notably, the Michigan Vehicle Code does not prevent local authorities from “[r]egulating or prohibiting processions or assemblages on the highways or streets.” MCL 257.606(1)(d). The Uniform Traffic Code, in turn, authorizes chiefs of police to issue permits for parades and processions. Mich Admin Code, R 28.1447.

Department of State Police as administrative rules. MCL 257.951(1) (“The director of the department of state police may promulgate a uniform traffic code in compliance with the administrative procedures act[.]”). The rules are set forth at Mich Admin Code, R 28.1001 through R 28.2075.⁹

Rule 28.1713(1) of the Uniform Traffic Code provides that “[a] *person* shall not *stand in a roadway* for the purpose of *soliciting* a ride, employment, or *business* from the occupant of any vehicle.” (Emphasis added). A violation of this rule constitutes a civil infraction. Mich Admin Code, R 28.1713(2). As a duly promulgated rule, Rule 713 has legal force and effect. See *Michigan Farm Bureau v Dep’t of Environmental Quality*, 292 Mich App 106, 129 (2011).

The rules of construction applicable to statutes also apply to administrative rules. *Detroit Base Coalition for the Human Rights v Dep’t of Social Services*, 431 Mich 172, 185 (1988); MCL 24.232(1). Accordingly, when interpreting an administrative rule, the plain meaning of the critical word or phrase must be considered. *People v Plunkett*, 485 Mich 50, 58 (2010).

The Uniform Traffic Code incorporates definitions from the Michigan Vehicle Code. Mich Admin Code, R 28.1001(2). Thus, for purposes of Rule 713 the word “person” means “*every natural person*, firm, copartnership, association, or corporation and their legal successors.” MCL 257.40 (emphasis added). The term

⁹ The administrative rules are available at http://w3.lara.state.mi.us/orr/Files/AdminCode/17_10016_AdminCode.pdf, (accessed July 6, 2016).

“roadway” means “that portion of a highway improved, designed, or ordinarily used for vehicular travel.” MCL 257.55. But neither the Uniform Traffic Code nor the Michigan Vehicle Code defines the terms “soliciting” or “business.” As above, reference to dictionary definitions is thus appropriate. *Jordan*, 200 Mich App at 451.

The term “soliciting” as used here means “to ask or seek earnestly or pleadingly; appeal to or for [to solicit aid, to solicit members for donations][.]” Webster’s New World Dictionary (3rd ed, 1988). The word “business” has many definitions, but may reasonably be understood here to mean “one’s work, occupation, or profession.” *Id.* And while civic and charitable organizations may not be viewed as businesses in the ordinary sense, these organizations nevertheless conduct “business.”

In *Auto-Owners Insurance Co v Seils*, 310 Mich App 132, 137-138 (2015), the Court of Appeals interpreted the term “business” as used in an insurance contract and applied to the Fraternal Order of Police Associates (FOPA), Grosse Pointe Lodge 102, a nonprofit corporation organized for the purpose of supporting the police and various charities. The Court quoted several definitions of the term “business,” *id.* at 148, ultimately concluding that the FOPA’s “business” was its charitable activities:

[I]n this context, the word “business” can fairly be read as “occupation, profession, or trade,” *Random House Webster’s College Dictionary* (1992), or “specific occupation or pursuit,” *The American Heritage Dictionary, Second College Edition* (1985). Fundraising was necessary

for the FOPA’s “business” or “pursuit” of charitable and civic activities, and the concession agreement clearly related to or pertained to the FOPA’s “business” or “pursuit” of charitable and civic activities. [*Id.* at 153.]

This conclusion is consistent with Michigan’s Nonprofit Corporation Act, MCL 450.2101 *et seq.*, under which many charitable and civic organizations are incorporated. That Act contains numerous and varied references to the word “business,” and makes clear that nonprofit corporations – although not formed to make a profit – conduct “business” as they go about their daily activities to achieve their organizations’ purpose. See, for example, MCL 450.2501(1) (“The *business* and affairs of a corporation shall be managed by or under the direction of its board . . .”) (emphasis added); MCL 450.2911(1)(e) (Each nonprofit corporation’s annual report shall include “[t]he general nature and kind of *business* in which the corporation is engaged.”) (emphasis added); MCL 450.2209(1)(a) (The nonprofit corporation’s articles of incorporation shall include a “provision for management of the *business* and conduct of the affairs of the corporation . . .”) (emphasis added); MCL 450.2241(a) (Each nonprofit conducting business in Michigan shall maintain “[a] registered office that may be the same as its place of *business*.”) (emphasis added).

Accordingly, applying these definitions of “soliciting” and “business,” it is reasonable to conclude that a person asking for contributions in support of a civic or charitable organization, is “soliciting . . . business” for purposes of Rule 713. The Rule thus prohibits a member of a charitable or civic organization, as a natural person, from being in a highway for the purpose of asking for contributions on behalf of the organization from the occupants of vehicles. This would also be true

for any other person engaged in activities prohibited under the Rule, including persons offering goods or services for sale to vehicle occupants or panhandling. Rule 713 contains no exceptions, but is qualified in that the person must be within the portion of the roadway “improved, designed, or ordinarily used for vehicular travel” in order to violate the rule. A person soliciting contributions somewhere other than within the improved portion of the roadway would not violate Rule 713.

Nonetheless, while doing so may avoid violation of Rule 713 of the Uniform Traffic Code, such activity may still violate section 676b of the Michigan Vehicle Code if the person’s soliciting blocks, obstructs, impedes, or otherwise interferes with the normal flow of vehicular traffic upon the street or highway.¹⁰ And as discussed above, whether the activity violates section 676b will depend upon the particular facts and circumstances as determined by local law enforcement.

This office recognizes the important services charitable and civic organizations provide to Michigan citizens, and is cognizant of the constitutional protections accorded their solicitation activities in traditional public forums. See

¹⁰ There are a number of other statutes and rules governing pedestrians, i.e., “any person afoot,” MCL 257.39, that might be implicated by the activities discussed in this Opinion. See, for example, MCL 257.655(1) (“Where sidewalks are provided, a pedestrian shall not walk upon the main traveled portion of the highway.”); Mich. Admin Code, R 28.1701 (pedestrians are subject to traffic control signals); R 28.1705 (crossing roadway at right angle or shortest route); R 28.1706 (pedestrians crossing roadway at point other than within marked crosswalk must yield right-of-way to vehicles in roadway); R 28.1709 (prohibiting crossing roadway except in marked crosswalk where traffic-control signals are in operation); and R 28.1710 (prohibiting crossing a roadway other than in a crosswalk in a business district). Moreover, the soliciting activities at issue may also place vehicle drivers at risk of violating provisions of the Michigan Vehicle Code or Uniform Traffic Code.

Village of Schaumburg v Citizens for a Better Environment, 444 US 620 (1980) (holding that charitable organizations' solicitations for contributions are protected speech); *Frisby v Schultz*, 487 US 474, 481 (1988) ("all public streets are held in the public trust and are properly considered traditional public fora"). Even so, the government may impose reasonable time, place, and manner restrictions on such activities. *Ward v Rock Against Racism*, 491 US 781, 791 (1989). State and local governments have a significant governmental interest in preserving the orderly flow of traffic and pedestrian safety, and similar laws have been upheld as constitutional. See *Contributor v City of Brentwood*, 726 F3d 861 (CA 6, 2013) (ordinance prohibiting newspapers sales in street to vehicle occupants constitutional); *Ater v Armstrong*, 961 F2d 1224 (CA 6, 1992) (statute prohibiting persons from standing in roadways but with limited exception for soliciting with appropriate safety measures constitutional); *Traditionalist American Knights of the Ku Klux Klan v City of Desloge*, 775 F3d 969 (CA 8, 2015) (ordinance prohibiting pedestrians from soliciting or distributing in roadways was constitutional).¹¹ But see, e.g., *Wilkinson v Utah*, 860 F Supp 2d 1284 (D Utah, 2012) (holding that statute prohibiting persons from soliciting contributions from vehicle occupants while in a roadway was unconstitutional).

¹¹ The decision in *Speet v Schuette*, 726 F3d 867 (CA 6, 2013), is distinguishable because the state statute at issue in that case placed a blanket prohibition on panhandling at all times and in all places.

It is my opinion, therefore, that Rule 713, of the Uniform Traffic Code, prohibits a person in the improved portion of a roadway from soliciting contributions in support of a civic or charitable organization from the occupant of any vehicle. Mich Admin Code, R 28.1713.



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