



November 2, 2009

Bob Mullins, Administrator
Administration and Finance Committee
Machesney Park Village Hall
300 Machesney Road
Machesney Park, IL

Re: Door-to-door selling in Machesney Park

Dear Sir,

As in-house legal counsel for Southwestern Company in Nashville, I have seen the *Rockford Register Star* webcast posted October 31 entitled, "Proposal would end door-to-door sales". Independent collegiate book dealers have been engaging in the direct selling of Southwestern's family-oriented products each summer since 1868.

Although some residents have had unwanted experiences with door-to-door solicitors, I can report that door-to-door selling of quality products and services does indeed make a contribution to the local community. Americans are quite social people who do not live behind moats.

The Village is legally obligated to avoid prior or burdensome restraint of Free Speech and impedance on Interstate Commerce. I work with local governments to facilitate permission for qualified student dealers to engage in door-to-door selling of literary, educational and religious products, including children's educational books, subject-oriented study guides for students, and educational software produced and distributed by Southwestern. If the Village desires to adopt rationale and lawful regulation of direct selling, I hereby offer to collaborate with your Village leaders and representatives in that regard.

As for Southwestern's program, outstanding college students in good standing from the U.S., Canada, Europe and even South Africa participate in our book selling program each year. The independent student dealers are wholesale customers of Southwestern Company who, upon completion of training, set up summer's residence in a community, open a local bank account, and commence operating their own private enterprise.

Each student dealer carries a photo id badge on sales calls. Their participation in Southwestern's program can be immediately verified at www.southwesternathome.com. The independent dealer's book bag contains product descriptions or samples and customer order forms. The order forms include the mandatory 3-day right of rescission notice. Southwestern Company takes care of the sales tax collections and remittances. Our Customer Call Center in Nashville remains readily available for each of the book dealer's customers, even after they each return home or to college at the end of the Summer. Consequently, no risk is presented to the City or its residents.

MAILING ADDRESS: P.O. BOX 305140
OFFICES: 2451 ATRIUM WAY
615.391.2500

NASHVILLE, TN 37230
NASHVILLE, TN 37214
www.southwestern.com

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If you are having a problem with less disciplined "solicitors" or troublesome transients, go after them specifically, but refrain from substantially impeding legitimate direct selling.

Legitimate direct selling organizations actually contribute to improving the quality of life of local residents, whether they are selling or explaining literary or religious products, financial products and services, energy options, household appliances and home maintenance products and services, culinary/nutritional products, etc.

Since 1976, commercial solicitation has been declared by the U.S. Supreme Court to be a form of commercial free speech that is protected by the First Amendment.¹ The Village may fairly regulate commercial speech but its regulations must be no more extensive than what is necessary to balance the welfare of the public with the constitutional rights of the solicitor.²

Permitting coupled with personal identification typically works well, provided the conditions of the permit privilege are no more extensive than what is necessary to balance fairly the welfare of the public with the rights of the solicitor.

Private signage at individual residences works quite well and is lawful. Again, Americans for the most part are very social people and do not live like hermits, including in residential neighborhoods. The First Amendment protects the "listener" (i.e. the residents who want to hear periodic information about goods and services being offered) as much as the "speaker" (i.e. the solicitor). For the home resident who does not want to be solicited at home, the fix is quite simple ... post a "No Solicitation" sign at the house.

For the Village to go beyond private signage and permitting could be legally challenged, thus placing your Village in legal jeopardy and its treasury at risk if it insists on abridging the First Amendment and impeding Interstate Commerce. Let's avoid that unnecessary burden. Simply adopt regulations that fairly regulate but do not unduly restrict door-to-door soliciting. Please share this insight with each member of your Committee for the hearing this evening and for any subsequent meetings on this subject matter.

Best regards,
SOUTHWESTERN COMPANY

Gary Q. Pears
Corporate Legal Counsel

¹ *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976).

² *Central Hudson Gas & Electric v. Public Services Commission of New York*, 447 U.S. 557 (1980) controls. See *Watchtower Bible & Tract Society of New York, Inc., et al. v. Village of Stratton, et al.*, 2002 WL 1305851 (U.S.)