

LEGAL BULLETIN 2018-10

AUGUST 23, 2018

**GAINESVILLE POLICE DEPARTMENT
GAINESVILLE FLORIDA****TO: ALL PERSONNEL VIA DIVISION/SECTION COMMANDERS****RE: PANHANDLING & OBSTRUCTION OF PUBLIC STREETS, HIGHWAYS
ROAD (FSS 316.2045)**

As you are all aware (or should be), the federal courts have held that panhandling and soliciting are protected First Amendment speech activities. With the unenforceability of panhandling ordinances and statutes due to federal case law, law enforcement agencies nationwide have been attempting to deal with citizen complaints regarding panhandling. While the federal courts have held that regulations based on speech as an element of the offense or which differentiate between types of speech (i.e. allowing non-profits to solicit donations or political speech while prohibiting the homeless from seeking handouts), the government is still able to enforce non-speech related prohibitions based on the panhandler's conduct. For example, Battery, Assault, Disorderly conduct and non-speech related pedestrian violations.

However, Florida Statutes Section 316.2045 – *Obstruction of public streets, highways and roads* has been found unconstitutional because it allows charitable organizations and political speech as exceptions to its prohibitions. In 2006, the City and the Sheriff's Office were sued for the unlawful enforcement of this unconstitutional statute. The City ultimately stipulated to the issuance of a permanent federal injunction prohibiting the enforcement of this section involving panhandlers in Chase, Rogers and Nelson v. City of Gainesville and Sheriff Oelrich, 1:06cv-44-SPM/AK. **Therefore, do not charge any person who is soliciting or panhandling under FSS 316.2045.** Doing so would be a violation of the federal injunction and a violation of rights since the statute has been found to be unconstitutional. Enforcement of FSS 316.2045 in these circumstances could lead to the officer being sued personally. The officer who is sued will not have the benefit of qualified immunity as a defense because the issue has been litigated and a permanent injunction has been issued.

Any charges brought against panhandlers and solicitors must be for violations of statutes or ordinances which do not differentiate between types of speech or in which speech is not an element of the offense.

If you have any questions about this Legal Bulletin, please contact the Legal Office at 393-7505 or email at libbylc@cityofgainesville.org.

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