



MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners

DATE: January 24, 2005

FROM: City Attorney

CONSENT

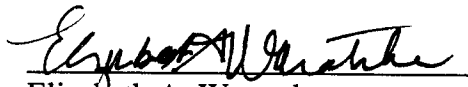
SUBJECT: Charles Chiodo v. Rob Koehler and City of Gainesville; United States District Court Case No. 1:04cv377-MMP/AK

Recommendation: The City Commission 1) approve the terms of the settlement; and 2) authorize the City Attorney to settle the claims of Charles Chiodo on behalf of the City.

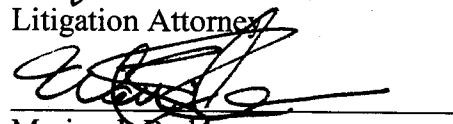
In October 2004, Charles Chiodo filed a lawsuit against Rob Koehler, individually, and the City of Gainesville alleging a violation of his civil rights. Rob Koehler is a police officer with the City. On May 11, 2004, Sergeant Koehler arrested Mr. Chiodo for exposing minors to a sign Sergeant Koehler believed was obscene. At the time, Mr. Chiodo was participating in a demonstration and carried a sign critical of President Bush.

A negotiated settlement has been reached that would resolve all claims against the City and Sergeant Koehler, pending approval by the City Commission. The City has already adopted a new policy regarding arrests for alleged obscenity that is now a part of the police department manual. A copy of the policy is attached. As a part of the settlement, the City has agreed to pay Mr. Chiodo \$12,000 as well as his attorney's fees and costs in the amount of \$4,600. Mr. Chiodo will dismiss with prejudice the case against the City and Sergeant Koehler. It is the recommendation of the Risk Management department, Sergeant Koehler's attorney and the City Attorney's Office that the case be settled as outlined above.

Prepared by:


Elizabeth A. Waratuke,
Litigation Attorney

Submitted by:


Marion J. Radson,
City Attorney

**Gainesville Police Department
General Order 83.4**

Title: Seizure of Allegedly Obscene Material

General Order: 83.4

Effective:

Revised: New

Accreditation Standards:

Pages: 2

c. Taken as a whole, lacks serious literary, artistic, political, or scientific value.

d. A mother's breastfeeding of her baby is not under any circumstance "obscene."

D. Procedure:

1. With regards to the seizure of allegedly obscene material, the Supreme Court has stated: The seizure of any material arguably protected by the first amendment must sustain a particularly "high hurdle in the evaluation of reasonableness" under the fourth amendment.

The content of signs used in conjunction with political protests is considered protected speech under the First Amendment to the United States Constitution. Only in the most unusual circumstances will a sign be determined to be legally obscene or otherwise unlawful based on content.

For this reason, before allegedly obscene materials may be constitutionally taken and preserved for evidence in a criminal or injunctive proceeding, a preliminary "determination of probable obscenity" must be made by a neutral Judge.

2. When an officer encounters material he/she believes to be obscene and subject to seizure, the issue of seizure must be taken up the chain of command for concurrence the material may be obscene.

A. Purpose: This Order provides a set of policies and guidelines for seizing allegedly obscene material.

B. Policy: To successfully seize, and prosecute, cases involving allegedly obscene material the Gainesville Police Department shall have policies and procedures in place which provide for the proper review of material believed to be obscene.

C. Definition:

1. **Obscene:** Florida State Statute 847.001 defines Obscene as the status of material which:

- a. The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- b. Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and;

a. If the material considered to be obscene is being offered for sale, a copy should be purchased to aid in review.

b. If the material considered to be obscene is not offered for sale and can be photographed, a picture should be taken to aid in review.

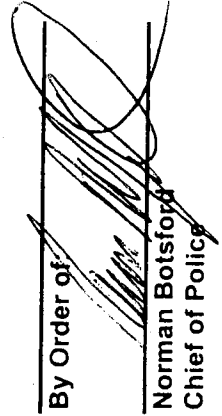
c. If the material considered to be obscene cannot be photographed, a detailed description should be made sufficient to convey why the officer deems the material to be obscene.

3. If, after review, the material is still deemed to be obscene, the issue of seizure will be referred to the Police Legal Advisor for review.

4. The Police Legal Advisor will take appropriate action for determination of probable obscenity. If a determination of probable obscenity is made, a warrant, if needed, will be issued authorizing seizure of the material.

5. **Exigent Circumstances:** Where there are exigent circumstances in which police action literally must be now or never to preserve the evidence of the crime, it is reasonable to permit action without prior judicial evaluation, however review by the chain of command and legal advisor are still to be followed.

By Order of


**Norman Botsford
Chief of Police**