

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
WORKSHOP SUMMARY

Meeting Date: July 13, 2010

Department

Submitted By: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

**Title:** Regulating the Use of Rights-of-Way in the County by Individuals or Groups Distributing Goods and Materials or Soliciting Funds.

**Summary:** This workshop was requested by the Board at its April 20, 2010 meeting after the County Attorney's Office presented options for regulating the distribution of goods and materials or solicitation of funds on portions of the County's rights-of-way (Roadway Activities). The Board was specifically interested in hearing from Sheriff Ric Bradshaw regarding enforcement prior to deciding on what, if any, restrictions are needed to regulate the use of Palm Beach County (County) rights-of-way. Sheriff Bradshaw will be in attendance at the workshop. Following discussion with Sheriff Bradshaw, the options discussed at the April 20<sup>th</sup> meeting will be presented along with additional information and updated recommendations. Countywide (MRE)

(Continued on Page 3)

**Attachments:**

- 1. 4/20/10 Agenda Item
- 2. Letter from Office of the State Attorney

Recommended by: Maureen Cullen for Denise Nieman 7/7/10  
County Attorney Date

Approved by: N/A \_\_\_\_\_  
Date

**I. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
 <b>NET FISCAL IMPACT</b>	 _____	 _____	 _____	 _____	 _____
 <b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	 _____	 _____	 _____	 _____	 _____

Is Item Included in Current Budget?                      Yes \_\_\_\_\_ No \_\_\_\_\_

Budget Account No.:    Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_

Reporting Category \_\_\_\_\_

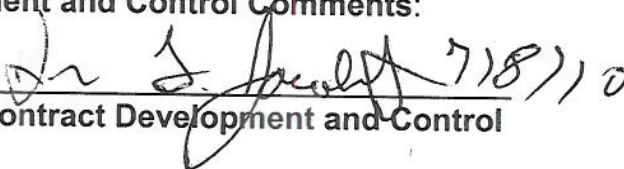
**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

**C. Departmental Fiscal Review: \_\_\_\_\_**

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

  
\_\_\_\_\_ **OFMB**

  
\_\_\_\_\_ **Contract Development and Control**

**B. Legal Sufficiency:**

  
\_\_\_\_\_ **Assistant County Attorney**

**C. Other Department Review:**

\_\_\_\_\_  
**Department Director**

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.**

**Background and Policy Issues:** As the County has become more urban and traffic has increased, the Commissioners and County staff have received an increasing number of complaints about the safety of the motoring public and individuals involved in Roadway Activities. The Board expressed a desire to develop ways to address these complaints and requested that the County Attorney's Office research the County's ability to regulate Roadway Activities.

The County Attorney's Office researched the issue and presented the following options to the Board at the April 20, 2010 meeting: **Option 1:** Adopt an ordinance prohibiting any organizations or individuals from standing on medians and travel lanes of County roads for the purpose of soliciting contributions of funds from, or distributing goods or materials to vehicles traveling on County roads; **Option 2:** Adopt an ordinance allowing individuals or organizations to solicit contributions of funds from, or distribute goods or materials to vehicles traveling on County roads, but with certain time, place, and manner restrictions; **Option 3:** Seek increased enforcement of state law for individuals who violate state traffic laws on state and County roads. After considering the various options and enforcement issues, the Board decided that before a final decision could be made, input from Sheriff Ric Bradshaw was needed. This matter was scheduled for a workshop and Sheriff Bradshaw agreed to be present.

Although the options presented at the April 20, 2010 meeting are still available, recent developments offer alternate ways to implement **Option 1** and **2** and provide additional information on **Option 3**.

#### **Option 1 and Option 2:**

The City of St. Petersburg (City) recently broadened the scope of its panhandling ordinance to prohibit all street solicitations between a street vendor and the driver or occupant of a motor vehicle while the motor vehicle is on the traveled portion of certain designated City streets and state roads. The ordinance was challenged by the Times Publishing Company (Times) in U.S. District Court, but the Times failed to persuade the judge to rule in its favor and the City ordinance was upheld. This ruling supports **Option 1** and **2**, but offers variations on implementation. For example, instead of providing shoulders and sidewalks as an alternate location for Roadway Activities (**Option 1**) or allowing Roadway Activities on most County roads, but restricting the time, place and manner in which the Roadway Activities may be conducted (**Option 2**), the City ordinance bans all Roadway Activities on some, but not all City streets. This approach provides for time, place and manner restrictions based on safety concerns on the most heavily traveled streets by formally designating streets where Roadway Activities may not occur, but leaving open other City roads for Roadway Activities. Additionally, the City ordinance includes some heavily traveled state roads in the ban. This approach may afford the County an opportunity to extend County regulations to some state roads as well. The City ordinance is directed at transactions between the panhandler and a driver or occupant of motor vehicles when the vehicle is on the traveled portion of roads. Therefore, it does not prohibit persons from standing on a sidewalk to distribute or sell goods or materials to pedestrians

or the driver or occupant of a legally parked motor vehicle, nor does it prohibit persons from standing on a public sidewalk with a sign soliciting business, or communicating religious, political, or social views.

### **Option 3:**

Although Sheriff Bradshaw will address enforcement of the various options available to regulate Roadway Activities, there are recent developments the Board should be aware of that specifically involve **Option 3** and may limit its effectiveness. **Option 3** specifically included a reference to increased enforcement of existing statutes, and while this option remains available, a recent event limits the Florida Statutes that law enforcement can use in citing individuals involved in Roadway Activities. Recently, a panhandler in Palm Beach County was arrested under F.S. 316.2045 (Obstruction of public streets, highways and roads) and after a Motion to Dismiss was filed on the panhandler's behalf, the charges were dropped. The State Attorney announced that his office would not prosecute individuals charged under F.S. 316.2045 due to sufficient doubt of the enforceability of the statute. Based on the State Attorney's determination, the Palm Beach County Sheriff's Office issued a directive that deputy sheriffs refrain from issuing citations under 316.2045, but the other applicable statutes governing pedestrian and traffic regulations (F.S. 316.130 and 316.072) should continue to be enforced. These last two statutes apply to all public roads and regulate pedestrian use of the travel lanes, but not medians. Should the Board determine that enforcement of the current statutes is insufficient to provide for the safety of the public, the Board should choose **Option 1, Option 2** or some variation thereof to limit Roadway Activities on medians.

### **Board direction is requested on the following:**

If the Board decides it is in the best interest of the health, safety and welfare of pedestrians and the motoring public to regulate Roadway Activities, staff requests direction to implement **Option 1, 2** or **3**.

1. If the Board chooses **Option 1**, staff requests Board direction to prepare an ordinance and indicate its preference for one of the following approaches:
  - a) Banning all Roadway Activities on County roads and medians, but allow use of the shoulders and sidewalks;
  - b) Banning all Roadway Activities on County and state roads and medians, but allow use of the shoulders and sidewalks;
  - c) Banning all Roadway Activities on some County roads and medians and direct Engineering to evaluate and determine which roads should be included in the ban; or
  - d) Banning all Roadway Activities on some County and state roads and medians and direct Engineering to evaluate and determine which roads should be included in the ban.

2. If the Board chooses **Option 2**, staff requests Board direction to investigate, develop procedures and guidelines, and to prepare an ordinance implementing time, place, and manner restrictions of Roadway Activities, including, but not limited to, restrictions on:
  - a) The times of the day;
  - b) The days of the week;
  - c) Some or all County roads;
  - d) Some or all state roads;
  - e) The location on the rights-of-way;
  - f) The number of individuals involved in Roadway Activities at one location; and
  - g) Types and sizes of signage.
  
3. If the Board chooses **Option 3**, staff will take no action on County or state roads and the Sheriff will continue to enforce existing laws governing pedestrians on public roads, but medians will be exempt.

**Conclusion:**

Streets and sidewalks are public forums and have a long history as places for the public to assemble and debate. Under the First Amendment, some activities cannot be banned entirely, but as long as there is an alternate forum (sidewalks, shoulders, designated streets) for the protected activity, time, place and manner regulations (Regulations) may be adopted. However, the Regulations must be content neutral (applied to anyone involved in Roadway Activities without regard to the message conveyed); serve a significant governmental interest (such as safety); and narrowly tailored to achieve the government's interest. Staff believes the options presented meet these considerations.

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Agenda Item #: **5C-1**  
VISA 4-3  
T, S, K opposed  
motion to schedule  
workshop to discuss  
3 options w/ PB SO

Meeting Date: April 20, 2010 [ ] Consent [X] Regular  
[ ] Public Hearing

Department

Submitted By: COUNTY ATTORNEY'S OFFICE

Submitted For:

I. EXECUTIVE BRIEF

**Motion and Title:** Staff requests board direction: regarding options for regulating the distribution of goods and materials or solicitation of funds on portions of the County's rights-of-way.

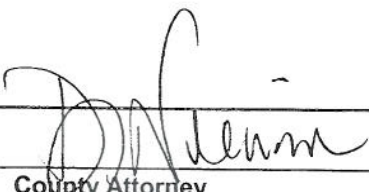
**Summary:** The Board requested that the County Attorney's Office research the County's ability to regulate distribution of goods and materials or solicitation of funds on the County's rights-of-way. This item offers options for the Board's consideration. Countywide (MRE)

**Background and Policy Issues:** As the County has become more urban and traffic has increased, the Commissioners and County staff have received an increasing number of complaints about the safety of the motoring public and individuals distributing goods and materials to or soliciting funds from vehicles on County rights-of-way. The Board has expressed a desire to develop ways to address these complaints through regulating activities occurring on medians and roadways. The County Attorney's Office has researched this issue and the findings are outlined below.

Since streets and sidewalks are traditional public forums and have long been used to assemble and debate, the government's ability to restrict activity is very limited. In fact, some activities cannot be banned entirely, but may be regulated as to the time and place of the activity and the manner in which the activity is conducted. If a government regulates the time, place and manner of the activity, it must do so without regard to the content of the message espoused by the individual or group, and with a regulation that is narrowly tailored to serve a significant governmental interest. If the government prohibits expression in a traditional forum, it must leave open an alternate channel for the communication. (Continued on Page 3)

**Attachments:**

1. None
- 2.

Recommended by:  3/25/10  
County Attorney Date

Approved by: N/A  
Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	___	___	___	___	___
Operating Costs	___	___	___	___	___
External Revenues	___	___	___	___	___
Program Income (County)	___	___	___	___	___
In-Kind Match (County)	___	___	___	___	___
<b>NET FISCAL IMPACT</b>	<b>* ___</b>	___	___	___	___
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	___	___	___	___	___

Is Item Included in Current Budget? Yes \_\_\_ No \_\_\_

Budget Account No.: Fund \_\_\_ Department \_\_\_ Unit \_\_\_ Object \_\_\_  
Reporting Category \_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

**C. Departmental Fiscal Review: \_\_\_\_\_**

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

\* no fiscal impact

*[Signature]* 4/15/2010  
OFMB 5/15/10 4/11/10

*[Signature]* 4/15/10  
Contract Development and Control

**B. Legal Sufficiency:**

*[Signature]* 3/23/10  
Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
Department Director

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.**

## Background and Policy Issues: (Continued from Page 1)

If the County establishes that there is significant governmental interest, such as safety, it is likely the County can successfully prohibit individuals or groups from using the travel lanes and medians of County rights-of-way. With this approach however, First Amendment considerations require that the County leave open an alternate channel for communication, such as sidewalks or shoulders. Therefore, the following discussion involves individuals and/or organizations soliciting contributions of funds from, or the distribution of goods or materials to, motor vehicles traveling on County roads in unincorporated County (hereinafter Right-of-Way Activities).

With the exception of the County's Roadside Vendor's Ordinance, which regulates commercial vendors selling certain items from the shoulder area of the rights-of-way, there are no ordinances regulating Right-of-Way Activities. Existing State law prohibits the obstruction of any public street or highway by standing or approaching motor vehicles or by endangering the safe movement of vehicles or pedestrians.

If the County finds that Right-of-Way Activities raise safety issues, and allows an alternate channel for the communication, the Board can impose time, place and manner restrictions on Right-of-Way Activities. The Board's options are as follows:

**Option 1: Prohibit Right-of-Way Activity on County Roads.** Adopt an ordinance regulating all Right-of-Way Activities by prohibiting such activities on medians and travel lanes on County roads. This option would prohibit Right-of-Way Activities by anyone standing on the medians and roadways of County roads in unincorporated County. There will be no exemptions for certain individuals or groups. However, this option would still allow use of the rights-of-way outside the travel lanes.

**Option 2: Allow Right-of-Way Activity but regulate the time, place and manner.** Adopt an ordinance allowing Right-of-Way Activities with certain restrictions as to time, place and manner on County roads. This option would allow Right-of-Way Activities, but only at specified times and locations in a manner consistent with safe use of the right-of-way. This option will require that an alternate channel for the communication is available and that the regulation is content neutral and narrowly tailored to serve a governmental interest. This option would require staff to develop specific procedures and guidelines.

**Option 3: Seek Increased Enforcement of State Law on State Rights-of-Way.** This third option would focus on State roads and seek increased enforcement of State laws governing activities on State rights-of-way. Statutes are in effect now that authorize and direct law enforcement agencies to enforce laws prohibiting the use of State roads by individuals engaged in the types of activities discussed above. This option would require involvement by the Palm Beach County Sheriff's Office, and no ordinance would be adopted at this time.

### Board direction is requested on the following:

Implement Option 1, 2 or 3.

1. If the Board chooses Option 1, staff requests that the Board direct Staff to prepare an ordinance prohibiting Right-of-Way Activities.
2. If the Board chooses Option 2, staff will develop specific procedures and guidelines to implement and bring back to the Board.
3. If the Board chooses Option 3, staff will take no action on County roads and request the Sheriff to enforce existing laws which do not allow this kind of activity on State rights-of-way.





# OFFICE OF THE STATE ATTORNEY

FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY



Michael F. McAuliffe  
STATE ATTORNEY

April 29, 2010

Barbara White  
Office of the Public Defender  
421 3<sup>rd</sup> Street  
West Palm Beach, Florida 33401-3432

Re: State v. Annese (2010MM006732AXX)

Dear Barbara:

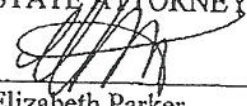
The Office of the State Attorney is in receipt of a Motion to Dismiss based upon the unconstitutionality of Florida Stat. 316.2045 (2010). The motion was filed at Gun Club by Assistant Public Defender Marie Calla in the above-captioned case.

After a thorough review of the statute and pertinent case law, the State concludes that enough doubt exists in the enforceability of Fl. Stat. 316.2045 to dismiss the charges in this matter. Further, this office will not prosecute cases in which defendants are arrested or cited for panhandling under the current version of Fl. Stat. 316.2045.

We will communicate our position to investigative law enforcement in the Fifteenth Judicial Circuit. However, should you become aware of any arrest or citation for panhandling predicated upon Fl. Stat. 316.2045, please notify this office so we can dispose of it without delay.

Sincerely,

MICHAEL F. McAULIFFE  
STATE ATTORNEY

  
Elizabeth Parker  
Chief Assistant State Attorney

cc: Hon. Carey Haughwout  
Public Defender, 15<sup>th</sup> Judicial Circuit

John Rivera