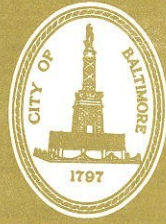


CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

October 12, 2011

The Honorable President and Members
of the Baltimore City Council
Attn: Karen Randle, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 11-0764 Advertising Circulars – Presumption of Placement Without Permission

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 11-0764 for form and legal sufficiency. The bill would create a presumption that advertising circulars found on unattended property were placed there without permission. The bill would also increase the penalties for repeated violations of the law.

Bill 11-0764 adds a presumption to the advertising circular law found in Article 19 Section 1-2 which makes it illegal to “affix, place or cause to be affixed or placed” certain commercial papers on any vehicle or residential property unless with the express permission of the owner or if left in a door slot or bin. City Code, Article 19, § 1-2. Bill 11-0764 adds a section to the law which states “An advertising circular found on an unattended property or vehicle is presumed to have been placed there without permission unless the person responsible for its placement can affirmatively establish otherwise.”

As written, this bill would shift the burden of proof of permission or authorization of the property owner (to leave the paper) to the defendant in a criminal charge. Although the presumption is rebuttable, Supreme Court cases suggest that the presumption is still unconstitutional, since the Due Process Clause guarantees that all elements of a criminal offense will be proven by the State beyond a reasonable doubt. *Sandstrom v. Montana*, 442 U.S. 510, 517, 524 (1979) and *Francis v. Franklin*, 471 U.S. 307, 317 (1985) (“A mandatory rebuttable presumption is perhaps less onerous from the defendant’s perspective, but it is no less unconstitutional.”).

For this reason, the Law Department recommends limiting the presumption to civil proceedings enforcing the law, which do not raise the same constitutional issues. 29 Am Jur 2d Evidence § 208. Even in a civil proceeding, statutory presumptions must contain a rational connection between the inferred fact and the proven fact (in this case, the lack of authorization and the fact that the property is unattended). *Id.* Assuming the Committee finds this rational

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connection, the presumption is valid and such a legislative judgment will be given deference by the courts. See, e.g. *County Court of Ulster County v. Allen*, 442 U.S. 140, 165 (1979).

The bill also raises the fines for violation of the law in accordance with Article II, Section 48 of the City Charter.

Subject to the above amendment, the Law Department approves Council Bill 11-0764 for form and legal sufficiency.

Sincerely,



Ashlea H. Brown
Special Assistant Solicitor

cc: Honorable Councilmember Mary Pat Clarke
George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor
Hilary Ruley, Assistant Solicitor
Victor Terval, Assistant Solicitor