

REGION OF OTTAWA-CARLETON
RÉGION D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf. R.2.5.177
Your File/V/Réf.

DATE 23 March 1999

TO/DEST. Co-ordinator, Transportation Committee

FROM/EXP. Acting Regional Solicitor

 Acting Deputy Commissioner
 Environment and Transportation Department

SUBJECT/OBJET **DONATION STATIONS**

DEPARTMENTAL RECOMMENDATIONS

That Transportation Committee recommend to Council that permits be issued on the following conditions:

- 1. That participants be allowed to enter the roadway;**
- 2. That participants may not collect from medians of less than one metre in width;**
- 3. That barricades designed to direct traffic not be permitted;**
- 4. That an intersection with 20 or more reportable annual vehicular collisions is not eligible for use as a site;**
- 5. That traffic not be restricted or excessively delayed;**
- 6. That safety vests must be worn by participants at all times;**
- 7. That events occur only during daylight hours;**
- 8. That there be no age restriction, but every applicant for a permit undertake and acknowledge in writing;**
 - (a) responsibility for each person collecting under his or her supervision;**
 - (b) that each “collector” will abide by the conditions of the permit, and;**

- (c) **that he or she and all participants will sign a waiver, and that this waiver will be sent to the Region immediately following the event, and that a legal guardian will sign the waiver on behalf of those under the age of 16 years;**

- 9. That cones not be placed on the travelled portion of the roadway.**

INTRODUCTION

In a staff report considered by Transportation Committee on 6 January 1999, Regional staff and police expressed concerns for the safety of those collecting money on Regional roads, the result of which was that Transportation Committee reviewed with staff how the Region might best regulate this activity. The Committee recommended to Council that staff issue permits in accordance with the following:

1. That participants be allowed to enter the roadway.
2. That participants may not collect from medians of less than one metre in width.
3. That barricades designed to direct traffic not be permitted.
4. That an intersection with 20 or more reportable annual vehicular collisions is not eligible for use as a site.
5. That traffic not be restricted or excessively delayed.
6. That safety vests must be worn by participants at all times.
7. That an event may be conducted between 7:00 a.m. and 9:00 a.m. and between 3:30 p.m. and 5:30 p.m. Monday to Friday.
8. That events occur only during daylight hours.
9. That participants be over the age of 18 years.
10. That traffic cones be permitted to direct traffic toward the donation station.
11. That permits be issued only to registered charities or those collecting for registered charities.

On 13 January 1999 Council directed that the report on Donation Stations be referred back to Transportation Committee for a review of the legal implications of certain of the Committee's proposed regulations.

ISSUES

1. Hours of operation - The contradiction between regulations which allow “collecting” in peak hours, but not in darkness, can be easily rectified by simply limiting use of the road to daylight hours. Accordingly, Nos. 7 and 8 above can be combined to direct that permits be issued for daylight events only.

2. Age prohibition - A basic requirement of all by-laws is that they not discriminate, unless the enabling legislation specifically allows it. Prohibiting persons of less than 18 years of age from obtaining a permit is discriminatory, and there is no legislative justification for the discrimination. According to the Supreme Court of Canada, the fact that the Council has good intentions in passing such a by-law (e.g. public safety) will not overcome its invalidity due to age discrimination. However, keeping in mind that every applicant is presently required to sign a waiver, item No. 9 above might be replaced by a requirement that,
 - (a) every person on the road have a permit, and that permits be issued only to those capable of signing a legally enforceable waiver, exempting the Region from liability. Documents signed by persons under the age of 16 years are not generally enforceable and would not therefore be accepted; or

 - (b) that every applicant for a permit undertake and acknowledge in writing:
 - (i) responsibility for each person collecting under his or her supervision;

 - (ii) that each “collector” will abide by the conditions of the permit; and

 - (iii) that he or she and all participants will sign a waiver, and that this waiver will be sent to the Region immediately following the event, and that a legal guardian will sign the waiver on behalf of those under the age of 16 years.

Staff recommends the second of these options.

3. Traffic cones - Under the *Highway Traffic Act* the police are authorized to place cones on the travelled portion of the roadway to direct traffic. The Region itself can do the same for safety reasons during maintenance, repairs, or “special events”. However, there is no authority for members of the public to do this, and it could therefore only be done under the direct and continuous supervision of Regional staff or the Police. This would add extra cost to the event organizer. It is recommended that No. 10 be modified to disallow traffic cones on the travelled portion of the road, but to allow them on sidewalks, median or boulevard only.

4. Charities - to allow charities to collect (or groups collecting for charities) and to prohibit others is discriminatory. As stated above, such a regulation can only survive if the discrimination is authorized by Provincial legislation. The *Municipal Act* allows the Region to “fix days when persons and organizations in charitable or patriotic work may solicit contributions of money from persons” on its highways, which by implication may appear to discriminate in favour of charities. However, the preferred interpretation of the Section is that

it does not. The ability to fix days on which charities may collect does not include the right to discriminate against non-charities by prohibiting them. Accordingly, staff recommends that permits not be limited only to charitable groups.

CONCLUSION

The proposed prohibition of those under 18 years of age, and of non-charities, is discriminatory. The age issue might be approached in a different manner, as described in this Report, and dealt with in accordance with the second option described above. Allowing persons other than Police Officers and Regional staff to place safety cones on the travelled portion of the roadway for directing traffic is not authorized by legislation, and for the Region to approve their use for this purpose would, in the event of an accident in which they were a factor, expose it to liability.

*Approved by
Eric Johnston*

*Approved by
Doug Brousseau*

ELM/hm