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OPINION NO. 94-02

TO: Michael L. Strobe, Police Chief
FROM: Stephen M. Kemp, City Attorney
DATE: June 3, 1994
SUBJECT: Application of Curfew Ordinance

QUESTION:

Does the public area of a multi-family housing complex constitute a public place under the City of Peoria Curfew Ordinance, Ord. 93-09.

OPINION:

The relevant language of the Ordinance states as follows:

- A. It is unlawful for any person FOURTEEN (14) YEARS OF AGE AND UNDER eighteen (18) years of age to remain upon, go or be upon any public street, alley or other public place of the City between 10:00 p.m. and 5:30 a.m. on Sunday, Monday, Tuesday, Wednesday and Thursday and between the hours of 12:00 midnight and 5:30 a.m. on Friday and Saturday unless such person is accompanied by a parent, guardian or some other person above the age of eighteen (18) years having legal custody of the minor or is en route directly home from an authorized function sponsored by a church, educational institution, civic organization or social organization or similar supervised activity.
- B. It is unlawful for any person UNDER the age of FOURTEEN (14) to remain upon, go or be upon any public street, alley or other public place of the City between 10:00 p.m. and 5:30 a.m. on any day, unless such person is accompanied by a parent, guardian or some other person above the age of eighteen (18) years having legal custody of the minor or is en route directly home from an authorized function sponsored by a church, educational institution, civic organization or social organization or similar supervised activity.

Generally, the issue of whether a curfew ordinance should be evaluated on a "rational basis"¹ standard or a "strict scrutiny"² standard has not been resolved. It is the opinion of this office that a rational basis standard should be used in defining the meaning of the term "public place." See, Seeley v. State, 134 Ariz. 263, 655 P.2d 803 (App. 1982).

A public place by definition is a location that is held to be open to access by the public, generally in the status of an "invitee." This would include shopping centers, public buildings and facilities. However, a city required urban greenbelt in a

¹. A "rational basis" standard requires that the government only have a legitimate purpose for the regulation.

². A "strict scrutiny" standard requires that the government have a compelling state interest that overrides the rights of the individuals involved.

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subdivision maintained by the homeowner's association has been defined as not being public premises for the purposes of immunity under the Arizona Municipal Liability Statutes. Walker v. City of Scottsdale, 163 Ariz. 106, 786 P.2d 1057 (App. 1989).

Considering a common area in a multi-family housing complex, the following points arise:

1. Are the common facilities, such as pools, swings, tables open to the public at large.
2. Are the common facilities maintained for the benefit of the public or the residents of the complex.
3. Are the common facilities designed to encourage the public to enter the complex, or primarily designed for the convenience of those who reside at the complex.

It is clear that these are not facilities designed for the public at large, rather the facilities are for the quiet enjoyment and benefit of the residents of the multi-family housing complex.

Therefore it must be concluded that common areas of multi-family housing complexes are not public places for purposes of enforcement of the City of Peoria Curfew Ordinance. If you should have any questions, please do not hesitate to contact me.

cc: Honorable Mayor and Council