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Record No. 5305

PETITION FOR WRIT OF MANDAMUS

In the
Supreme Court of Appeals of Virginia
at Richmond

RICHMOND FUNERAL DIRECTORS' ASSOCIATION, ET AL.

v.

W. L. GROTH, DIRECTOR, ETC.

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5305

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 28th day of February, 1961.

RICHMOND FUNERAL DIRECTORS' ASSOCIATION AND RICHMOND FUNERAL DIRECTORS' ASSOCIATION, INC., Petitioners,

against

W. L. GROTH, DIRECTOR OF PUBLIC SAFETY OF THE CITY OF RICHMOND, VIRGINIA, Respondent.

Upon a Petition for a Peremptory Writ of Mandamus

On the first day of the session came Richmond Funeral Directors' Association and Richmond Funeral Directors' Association, Inc., by counsel, and presented to the court their petition praying that a writ of mandamus do forthwith issue, directed to W. L. Groth, Director of Public Safety of the City of Richmond, Virginia, requiring and commanding him to reinstate reasonable rules and regulations theretofore promulgated or to again promulgate reasonable rules and regulations authorized by City Ordinance No. 56-15-27 which became Section 22-136 of the Richmond City Code, and otherwise comply with its provisions, and to enforce the said ordinance and reasonable rules and regulations promulgated pursuant thereto, and for other relief.

Thereupon came the respondent, by counsel, and obtained leave to file his answer, and said answer is accordingly filed.

And it appearing to the court that copies of the notice of this application and said petition have been duly served on the respondent, it is ordered that the case be docketed and the record printed; that the petitioners and respondent each file with the clerk 25 printed copies of their briefs on or before April 4, 1961; and the case is continued.

RECORD

* * * * *

Received 1/20/61—A. L. L.

* * * * *

NOTICE.

TO: W. L. Groth,
Director of Public Safety of the City of Richmond,
1014 East Broad Street
Richmond, Virginia

Take notice that the undersigned, counsel for Richmond Funeral Directors' Association and Richmond Funeral Directors' Association, Inc., will file the attached petition for mandamus with appended exhibits in open court of The Supreme Court of Appeals of Virginia at the hour of 9:30 o'clock, a.m., on the 27th day of February, 1961.

JACK N. HEROD
GORDON W. POINDEXTER, JR.

Counsel for Richmond Funeral Directors' Association and Richmond Funeral Directors' Association, Inc.

BOWLES, BOYD AND HEROD
901 Mutual Building
Richmond 19, Virginia

CERTIFICATE.

This is to certify that on the 20th day of January, 1961, I personally served a copy of the foregoing notice upon W. L. Groth, Director of Public Safety of the City of Richmond, Virginia, at his office in the City of Richmond, Virginia.

GORDON POINDEXTER, JR.
Counsel for Richmond Funeral Directors' Association and Richmond Funeral Directors' Association, Inc.

* * * * *

Rec'd. 1/20/61 $8.50 cash.

A. L. L.

PETITION FOR MANDAMUS.

To the Honorable Chief Justice and Justices of the Supreme Court of Appeals of the Commonwealth of Virginia:

1. Your petitioners are funeral directors engaged in the conduct of funerals in the City of Richmond at homes of deceased persons, churches, and funeral parlors maintained by petitioners for that purpose.

2. On February 27, 1956, the Council of the City of Richmond adopted an ordinance amending the 1937 Richmond City Code, which has been incorporated in the 1957 Richmond City Code as follows:

"In order to alleviate hazardous traffic conditions incident to the conduct of funerals, to provide a means for the orderly interment of the dead, and to preserve the safety, peace, good order, comfort, convenience and welfare of the inhabitants of the city, the director shall by appropriate rules and regulations restrict the parking or stopping of vehicles on the highways at places where funerals are conducted. Such rules and regulations shall designate the areas in the highways where such restrictions shall apply, and shall prescribe the time when such restrictions shall be in effect. The director shall cause appropriate signs to be placed in such areas, which shall be of such character as to readily inform an ordinarily observant person of the existence of such rules and regulations. It shall be unlawful for any person to violate such rules and regulations, and upon conviction thereof, shall be punished as provided by section 22-48 of this Code. (2-27-56.§1.)" (§40-96.1 City Code 1937; §22-136 City Code 1957)

3. The ordinance was adopted pursuant to authority granted by §46-259 of the Code of Virginia, which is now the first paragraph of §46.1-252, as follows:

"The council or other governing body of any city or town may, by a general ordinance, provide for the regulation of parking within its limits, including the right to install and maintain parking meters and to require the deposit therein of a coin of a denomination to be prescribed in such ordinance

and to determine the time during which a vehicle may be parked and may authorize the city manager, the director of public safety, the chief of police or other designated officer within the city or town to put the regulations into effect, including specifically the right and authority to classify vehicles with reference to parking and to designate the time, place and manner such vehicles may be allowed to park on city or town streets; and may delegate to the appropriate administrative official or officials the authority to make and enforce such additional rules and regulations as parking conditions may require and may prescribe penalties for failure to conform thereto. (1932, p. 658; 1938, p. 331; Michie Code 1942, §2154 (133;) 1944, p. 674)"

4. On March 1, 1956, the respondent, pursuant to the authority and direction of the ordinance promulgated rules and regulations restricting the parking or stopping of vehicles on streets at places where funerals are conducted.

5. On March 20, 1956, E. W. McMinn parked his automobile near the funeral parlor of one of the petitioners at a time designated for a funeral conducted there. The time of the funeral was specified on signs required by the ordinance, which had been placed where the automobile was parked and were in place at the time the vehicle was parked.

6. McMinn was prosecuted for violation of the ordinance in the Traffic Court of the City of Richmond, was convicted and appealed the conviction to the Hustings Court of the City of Richmond. The Hustings Court acquitted McMinn and in so doing rendered a written opinion on October 22, 1959, the effect of which was to declare that the ordinance was unconstitutional. A copy of the opinion of the Hustings Court is attached to and prayed to be read as a part of this petition as "Exhibit No. 1"

7. Immediately following the decision of the Hustings Court, the respondent withdrew all rules and regulations theretofore promulgated pursuant to the ordinance and refused to comply with its provisions; and notified the petitioners that the effect of the decision was such that the rules and regulations could not be enforced and that they must desist from operating under them.

8. Your petitioners on December 7, 1959, instituted a proceeding for a declaratory judgment against the respondent in the Hustings Court of the City of Richmond, Part II, praying that the Court construe and adjudicate that the ordinance is constitutional. A copy of the petition for declaratory judgment is attached to and prayed to be read as a part of this petition as "Exhibit No. 2."

9. The respondent answered the petition for declaratory judgment, a copy of which answer is attached to and prayed to be read as a part of this petition as "Exhibit No. 3."

10. On February 19, 1960, the Hustings Court of the City of Richmond, Part II, declared that the ordinance is valid and constitutional and any rules and regulations promulgated by the respondent pursuant thereto in the valid exercise of the police power are also valid and enforcable, and in so doing rendered a written opinion, a copy of which is attached to and prayed to be read as a part of this petition as "Exhibit No. 4."

11. Notwithstanding the decision of the Hustings Court, Part II, the respondent has refused to reinstate such rules and regulations or again promulgate other rules and regulations authorized and directed by the ordinance or to otherwise comply with its provisions.

WHEREFORE, and forasmuch as your petitioners and the families and friends of deceased persons are otherwise without sufficient and adequate remedy, they pray that this Honorable Court adjudge, order and decree that the ordinance is a proper and valid exercise of the police power conferred by §46-259 (now §46.1-252) of the Code of Virginia; that the ordinance is not in violation of the State or Federal constitutions; that the respondent be made a party to this petition and be required to answer the same; and that a writ of mandamus be issued directed to the respondent, commanding and compelling him to reinstate reasonable rules and regulations theretofore promulgated or to again promulgate reasonable rules and regulations authorized and directed by the ordinance, and otherwise comply with its provisions, and to enforce the ordinance and reasonable rules and regulations promulgated pursuant thereto.

RICHMOND FUNERAL DIRECTORS' ASSOCIATION
RICHMOND FUNERAL DIRECTORS' ASSOCIATION, INC.
By JACK N. HEROD
GORDON W. POINDEXTER, JR.

BOWLES, BOYD AND HEROD
901 Mutual Building
Richmond 19, Virginia

W. OSBORNE BROWN.

AFFIDAVIT OF PETITIONERS.

State of Virginia,
City of Richmond, to-wit:

This day personally appeared before me, Aubrey R. Bowles, III, a Notary Public in and for the City aforesaid, in the State of Virginia, W. Osborne Brown who stated on oath that he is President of Richmond Funeral Directors' Association, and that the matters and things stated in the petition for mandamus in the above styled matter are true to the best of his knowledge, information and belief.

Given under my hand this 18th day of January, 1961.
My Commission Expires August 31, 1963.

AUBREY R. BOWLES, JR.
Seal Notary Public.

CERTIFICATE.

This is to certify that on the 20th day of January, 1961 I personally served a copy of the foregoing petition for mandamus with attached exhibits upon W. L. Groth, Director of Public Safety of the City of Richmond, Virginia, at his office in the City of Richmond, Virginia, together with a notice that the petition would be filed in open court at 9:30 o'clock a. m. on the 27th day of February, 1961.

GORDON W. POINDEXTER, JR.
Counsel for Richmond Funeral Directors' Association and Richmond Funeral Directors' Association, Inc.

"EXHIBIT NO. 1."

In the Hustings Court of the City of Richmond.

City of Richmond,

v.

E. W. McMinn.

Opinion of the Court.

The Facts.

E. W. McMinn, the defendant in these proceedings, was convicted in the Traffic Court of the City of Richmond on a warrant charging him with violating a City Ordinance prohibiting the parking or stopping of vehicles on the streets of the City of Richmond while funerals were being conducted. (City Ordinance No. 56-15-27, adopted February 27, 1956)

The defendant resided at No. 2703A Kensington Avenue, Richmond, Virginia, which is located in an unrestricted parking area except during the hours when funerals are conducted from the Sutherland-Brown Funeral Home, hereinafter referred to as "funeral home."

The funeral home is located at the southeast corner of Kensington Avenue and the Boulevard. It fronts on the eastern line of the Boulevard and extends back to an alley in the rear The remainder of the block is occupied by private residences, including the one then occupied by the defendant.

Whenever services are conducted from the funeral home "no parking" signs are placed along the entire length of the southern line of the 2700 block Kensington Avenue, including the residential area, notifying the public that parking would be restricted during the hours a funeral is conducted.

On March 20, 1956, the defendant, who then resided at 2703A Kensington Avenue, which is located on the southern line of Kensington Avenue, in the residential area in the rear of the funeral home, parked his automobile in front of his residence. "No parking" signs were placed along the sidewalk announcing the hour of the funeral and as a result of leaving his automobile parked in the restricted area during the hour of the funeral the defendant received a summons (police tag) to appear in Traffic Court.

The defendant was convicted in Traffic Court for violation of said City Ordinance and from said conviction appeals.

The facts in the case are not in dispute thus the sole question to be considered by this Court is whether or not said ordinance is valid.

The Law.

It is a well established principle of law that "municipal corporations undoubtedly have power to make reasonable regulations in regard to parking automobiles on their streets. And, under the powers usually granted to them to control their streets and prevent obstructions, and interference with traffic,

they may prohibit the parking of automobiles on particular streets." (Road and Streets—Elliott—Section 1112.1 page 1522.)

It is equally as well established that an abutting property owner has no rights in the streets as against the City and State enacting reasonable traffic regulations, including a ban on parking, unless such regulations interfere with the owner's right of ingress and egress to his own property. (*Hoyne* v. *Wurstner,* 63 N. E.-2-S-229)

Section 2.01 of the Charter of the City of Richmond confers certain general powers on the City, and Section 2.04 paragraph (s) relates to the regulation of traffic. These are the usual provisions contained in the average City Charter.

The case before this Court involves one point of law, and one only, and that is whether or not one citizen shall have a superior right over another in the use of a city street.

Mr. Justice Spratley in delivering the opinion of the Court in *Robert* v. *City of Norfolk,* 188 Va. 413 at page 419 speaking for the Court said:

"The streets and highways belong to the public. They are built and maintained at public expense for the use of the general public in the ordinary and customary manner, municipalities, as arms of the State, have absolute control over the streets in the interest of the public. Municipal authorities, as trustees for the public, are charged with the duty of keeping the streets open and available for public use under the police power, they may lawfully regulate the conduct of those using the streets, *so long as legislation does not abridge the constitutional liberty of persons rightfully upon the streets.*" (Italics added)

The Court further said on Page 420;

"The authorities recognize the fundamental distinction between the ordinary right of persons to use the streets in the usual way, and the use of the streets as a place of business for private gain. *No individual or corporation has a right to use* the streets as a place for the prosecution of a purely commercial enterprise." (Italics added)

See also *Kizee* v. *Conway,* 184 Va. 306.

As stated in *Millerege* v. *City of Scottsbluff,* 164 Neb., 560, 83 N. W. (2nd) 76 in a case involving the right of a City to make street improvements under authorization contained in its charter the Court said:

"This grant by the State to the City was a delegation of police power to be exercised in harmony with a sound discretion in a reasonable and not in an arbitrary or discriminatory manner, State ex rel. *Andruss* v. *Mayor and Council of North Flatts,* 120 Neb. 413, 233 N. W. 4. It is generally for the municipal authorities, in the exercise of the police power delegated to the city in reference to its streets, to determine what action is required for the safety, convenience and welfare of the people. Its action in this respect is not final, but is subject to periodical review. The test in such a case is whether or not the action proposed is in good faith, reasonable exercise of the police power or an arbitrary and unreasonable interference with the right of the person or persons affected thereby."

As stated in *Webster County Court* v. *Roman,* 121 W. Va. 381, 3 S. E. (2nd) 631, quoting with approval from an Illinois case:

"In the use of a public street the law recognizes no favorites."

In the case of *Hoyne* v. *Wurstner et als., Supra.* the chief of the police in the City of Dayton, Ohio, erected or caused to be erected "no parking" signs along the side of a funeral home as well as in front of other premises on the same block. In this particular case the City did not rely on the presumption that the ordinances were valid, but upon testimony that tended to establish that traffic was heavy at the point involved; that parking along the frontage where prohibited would and did seriously affect the free and safe movement of traffic, particularly vehicular. The funeral home had for many years conducted a large and important establishment. The frontage involved was not frontage owned by the funeral home, but lots owned by others.

The Court in delivering its opinion (page 232 (4)) said:

"At the outset, it should be noted that, although the plaintiff now and for many years has conducted a large and important establishment with incidental funeral processions and the parking of vehicles connected therewith, the frontage involved in this suit is not that which abuts the property which he owns, but is on lots owned by others. It is probable that the plaintiff will be inconvenienced in conducting funerals by the enforcement of the traffic regulations, *but we know of no permission in law, nor is any cited, that would allow him any rights greater than that of the public at large to park in front*

of the property involved in this suit. As a matter of fact, plaintiffs ability, to accommodate owners of vehicles and funeral processions with parking privileges in front of the lots involved was the result of the public waiving its rights to park there. If the prayer of the petition were granted the plaintiff would have no superior rights to the public to park his own vehicle and those of his patrons in the frontage described." (Italics added)

In *Commonwealth* v. *Perry,* 139 Mass. 198, 29 N. E. 656, the court said:

"* * * if a legitmate business is conducted in such a way as to interfere with the rights of others in the use of a public highway, the same may be regarded as a nuisance subject to abatement."

Also in *City Council* v. *Parker,* 114 Ala. 118 at page 127.

"The propriator of the Exchange Hotel has no more right to permanently occupy the street adjacent to the sidewalk in front of his hotel with his hacks, than any other person, nor are his guests entitled to any greater consideration in the use of the sidewalks and streets of the city because they are guests. The public, in these respects, are upon equal footing."

See also *Decker* v. *Goddard,* 251 N. Y. Supp. 440, *Schulte* v. *Northern Pac. T. Co.,* 50 Cal. 592, and *Barron* v. *Murphy,* (Ky.) 38 S. W. Rep. 889.

This Court is of the opinion that the funeral home has no greater rights in the use of the streets than the general public, and, therefore, the case against the defendant McMinn will be dismissed.

"EXHIBIT NO. 2."

Virginia:

In the Hustings Court of the City of Richmond, Part II.

Richmond Funeral Directors' Association and Richmond Funeral Directors' Association, Inc., Petitioners,

v.

W. L. Groth, Director, Department of Public Safety, City of Richmond, Virginia, Defendant.

PETITION FOR DECLARATORY JUDGMENT.

To the Honorable M. Ray Doubles, Judge of the Hustings Court of the City of Richmond, Part II:

The petitioner, Richmond Funeral Directors' Association, an association composed of certain funeral directors doing business in the City of Richmond, Virginia, and the petitioner, Richmond Funeral Directors' Association, Inc., a non-stock, non-profit Virginia Corporation, also composed of certain funeral directors doing business in said City, bring this petition for themselves and on behalf of all others similarly situated and represent to the Court as follows:

1. The City Council of the City of Richmond adopted on February 27, 1956, City Ordinance No. 56-15-27 which became and is Section 22-136 of the Richmond City Code and which Section is as follows:

"Sec. 22-136. Restricted stopping or parking on highways where funerals conducted.

"In order to alleviate hazardous traffic conditions incident to the conduct of funerals, to provide a means for the orderly interment of the dead, and to preserve the safety, peace, good order, comfort, convenience and welfare of the inhabitants of the city, the director shall by appropriate rules and regulations restrict the parking or stopping of vehicles on the highways at places where funerals are conducted. Such rules and regulations shall designate the areas in the highways where such restrictions shall apply and shall prescribe the time when such restrictions shall be in effect. The director shall cause appropriate signs to be placed in such areas, which shall be of such character as to readily inform an ordinarily observant person of the existence of such rules and regulations. It shall be unlawful for any person to violate such rules and regulations, and upon conviction thereof, shall be punished as provided by section 22-48 of this Code. (2-27-56, §1.)"

2. The defendant, W. L. Groth, Director of the Department of Public Safety, City of Richmond, Virginia, pursuant to said section duly issued appropriate rules and regulations which would restrict the parking or stopping of vehicles on the highways at places where funerals were being conducted.

3. On October 22, 1959, the judge of the Hustings Court of the City of Richmond rendered an opinion in a certain criminal action styled, City of Richmond *v.* E. W. McMinn, in which

the said judge dismissed the case against the defendant, McMinn, for violating the provisions of the said section on the ground that the same was invalid.

4. The petitioners were not parties to the said criminal action and are not bound by the same.

5. Pursuant to the said decision in said criminal action, the defendant has notified the funeral directors of the City of Richmond, including your petitioners, that the effect of the said decision is that Section 22-136 is unconstitutional as not being a valid exercise of the police power and that said funeral directors must cease and desist from operating under said rules and regulations and said code section.

6. The petitioners believe and aver that Section 22-136, Richmond City Code is constitutional and that an actual controversy now exists between the petitioners and the defendant with respect to the constitutionality of said section.

WHEREFORE, in consideration of the foregoing and for as much as the petitioners are otherwise remediless, the petitioners respectfully pray that after due hearing this Court enter a declaratory judgment construing and adjudicating that said Section of the Richmond City Code is constitutional and that the defendant be enjoined from refusing to continue in effect his rules and regulations issued pursuant thereto until this Court shall have settled in this proceeding the controversy now existing between the petitioners and the defendant and shall have determined the constitutionality of said code section.

RICHMOND FUNERAL DIRECTORS' ASSOCIATION, and
RICHMOND FUNERAL DIRECTORS' ASSOCIATION, INC.

By .....

Jack N. Herod
901 Mutual Building
Richmond 19, Virginia
Counsel.

BOWLES, BOYD AND HEROD
901 Mutual Building
Richmond 19, Virginia
Of Counsel.

"EXHIBIT NO. 3."

Virginia:

In the Hustings Court of the City of Richmond, Part II.

Richmond Funeral Directors' Association, and Richmond Funeral Directors' Association, Inc., Petitioners,

v.

W. L. Groth, Director, Department of Public Safety, City of Richmond, Virginia, Defendant.

ANSWER.

The defendant, W. L. Groth, Director, Department of Public Safety, City of Richmond, Virginia, for his answer to the petition for declaratory judgment says:

1. That he admits the correctness of the allegations in paragraphs 1 to 6 inclusive of the petition.

2. That he joins in the prayers of the petition insofar as they seek an adjudication as to the constitutionality of Section 22-136, Richmond City Code.

W. L. GROTH, DIRECTOR,
DEPARTMENT OF PUBLIC
SAFETY, CITY OF RICHMOND
VIRGINIA

By .....
Counsel.

I hereby certify that a copy of the above answer was mailed to counsel of record for the petitioners, Jack N. Herod, Esq., 901 Mutual Building, Richmond 19, Virginia, on December 21, 1959.

.....
Counsel for W. L. Groth.

"EXHIBIT NO. 4."

Virginia:

In the Hustings Court of the City of Richmond, Part II.

Richmond Funeral Directors' Association, et al., Plaintiff,

against

W. L. Groth, Director, Department of Public Safety, etc., Defendant.

OPINION.

DOUBLES, J. This is a proceeding for a declaratory judgment as to the constitutionality of Section 22-136 of the Richmond City Code which reads as follows:

"Sec. 22-136. Restricted stopping or parking on highways where funerals conducted.

"In order to alleviate hazardous traffic conditions incident to the conduct of funerals, to provide a means for the orderly interment of the dead, and to preserve the safety, peace, good order, comfort, convenience and welfare of the inhabitants of the city, the director shall by appropriate rules and regulations restrict the parking or stopping of vehicles on the highways at places where funerals are conducted. Such rules and regulations shall designate the areas in the highways where such restrictions shall apply and shall prescribe the time when such restrictions shall be in effect. The director shall cause appropriate signs to be placed in such areas, which shall be of such character as to readily inform an ordinarily observant person of the existence of such rules and regulations. It shall be unlawful for any person to violate such rules and regulations, and upon conviction thereof, shall be punished as provided by section 22-48 of this Code. (2-27-56, §1)."

Section 46.1-252 of the Code of Virginia authorizes the council of a city to provide for the regulation of parking on the streets and highways within its limits, including the right to classify vehicles with respect to parking and to designate the time, place and manner in which such vehicles may be allowed to park; and the Council may delegate to an appropriate administrative official the authority to make and enforce such additional rules and regulations as parking con-

ditions may require. Pursuant to this law and to the City Charter, the City Council of Richmond has enacted the above-quoted ordinance.

There is no dispute over the facts in the present case which, briefly stated, are that the defendant, Director of the Department of Public Safety of the City of Richmond, has notified funeral directors in the City that the aforesaid ordinance is invalid and that certain rules promulgated by the Director in pursuant thereto and which restricted parking for limited periods when funerals were being conducted, were likewise invalid and were, therefore, rescinded.

Section 46.1-248 of the Code of Virginia provides as follows:

"(a) No vehicle shall be stopped in such manner as to impede or render dangerous the use of the highway by others, except in the case of an emergency as the result of an accident or mechanical breakdown * * *.

(b) No vehicle shall be stopped except close to and parallel to the right-hand edge of the curb * * *."

Vehicles in funeral processions are not exempted from the provisions of the foregoing section, therefore, in the absence of a local ordinance permitting the same, if such vehicle were to double park along a street in whose immediate vicinity funeral services were being conducted in a church, private home or funeral home, the operators of such vehicles would be subject to prosecution for a misdemeanor.

The net result of the action of the defendant is that no funeral procession can form on the public street in a parked position, and unless it is formed on a private parking lot and keeps moving once it enters a street, it would be virtually impossible for it to form at all, or if so, not without danger, inconvenience and lack of that solemnity and reverence properly due the occasion.

It may be contended that to restrict parking in front of residences and commercial establishments for the short length of time that a funeral service would take, and to grant the exclusive privilege during that period to the operators of motor vehicles included within a funeral procession, is to grant to a designated class of individuals rights greater than those enjoyed by the public at large; or that the granting of such privilege is discriminatory.

The foregoing contention is true unless the ordinance creating such privilege is enacted pursuant to a reasonable exercise of the police power. Whenever an enactment is made pursuant to the police power it results in discrimination in

some degree to a certain group of the public—but if the circumstances relied on to pass the legislation are sufficiently cogent, and if the provisions of regulation are reasonable in the light of the evil sought to be corrected or alleviated, then the enactment is valid.

In the present case the legislative question facing the City Council is whether funeral processions, and the formation thereof on the public streets, is something that is desirable or to be tolerated? If so, is legislation necessary? Faced with the alternative of double parking being prohibited by state law, the Council enacted the ordinance in question.

In so doing it did exactly what it had done in creating or authorizing the Director of Public Safety to do:

(1) In designating bus stops, where other parking is prohibited entirely;

(2) In designating taxi stands, which are reserved exclusively for taxi-cabs;

(3) In designating loading zones which are reserved exclusively for vehicles loading and unloading merchandize;

(4) In prohibiting parking altogether on certain streets during peak-hour traffic.

In all of the above situations both the general public and the property owner abutting such areas lose the privilege to use them for parking—yet such ordinances or regulations are valid because in each instance they are promulgated pursuant to a valid use of the police power; e. g., public safety is enhanced by passengers on busses being able to board and alight at the curb; public convenience and welfare is promoted by taxicabs having regular stands; etc. In each of the above instances a private utility or business is benefited at the expense of a certain group of the public and at the expense of the abutting property owner who loses parking privileges—but the benefit accruing to the particular beneficiary is purely incidental to the main purpose subserved, viz., public safety and welfare. Therefore, in the present case, the fact that a funeral home or undertaker might be benefitted by the ordinance is wholly immaterial if the ordinance is otherwise valid.

Funeral services at a church or private home, and more recently in chapels of funeral homes, followed by a funeral procession to the grave, are one of the very few ancient customs surviving the mad onrush of our modern civilization. It is one institution in which every segment of society would

seem to be desirous of preserving. The public generally desire to participate in this final opportunity to pay homage to the memory of a deceased loved one. The preservation of this reverance is a matter of public welfare, and if the preservation of funeral processions can be accomplished and facilitated without the unreasonable loss of other rights and privileges in the balancing of social interests, then use of the police power is justified.

The Court is of the opinion that the City Council has exercised a valid use of the police power in the enactment of Section 22-136 of the City Code and that the ordinance is constitutional.

In the ordinance the power to make rules and regulations governing funeral processions has been validly delegated to the Director of Public Safety. So long as the Rules promulgated by the Director are reasonable, they too are valid.

February 19th, 1960.

• • • • •

Rec'd. 2/27/61.

H. ....

ANSWER OF RESPONDENT.

The respondent, W. L. Groth, Director of Public Safety of the City of Richmond, Virginia, for answer to the petition for writ of mandamus with appended exhibits, says:

§1. That he admits the allegations of fact contained in §§1, 2, 4, 5, 6, 7, 8, 9, 10 and 11 of the petition.

§2. That he is not advised that he is required to answer the conclusions of law set out in §3 and §6 of the petition.

§3. That he does not dispute the jurisdiction of this Court in this matter conferred by §88 of the Constitution of Virginia and §17-96 of the Code of Virginia.

And now having fully answered the petition, the respondent prays that this Court adjudge, order and decree that the ordinance in question is a proper and valid exercise of the police power conferred upon the council of the City of Richmond by law; that the ordinance is not in violation of the Virginia or Federal constitution; and that he will abide by

the decision of this Court as to the other matters contained in the prayer of the petition.

W. L. GROTH
Director of Public Safety of the City of Richmond, Virginia.

J. E. DRINARD
City Attorney for the City of Richmond and counsel for W. L. Groth, Director of Public Safety of the City of Richmond, Virginia.

AFFIDAVIT.

W. L. Groth, Director of Public Safety of the City of Richmond, Virginia, respondent named in the foregoing answer to the petition for writ of mandamus herein, being duly sworn, says that the facts and allegations herein contained are true.

W. L. GROTH
Director of Public Safety of the City of Richmond, Virginia.

State of Virginia,
City of Richmond, to-wit:

Subscribed and sworn to before me, a Notary Public in and for the City and State aforesaid, in my City aforesaid, this 25th day of January, 1961.

My commission expires June 15, 1962.

CORINNE J. JOHENNING
Seal Notary Public.

CERTIFICATE OF SERVICE.

The undersigned, J. E. Drinard, attorney of record for the respondent herein, hereby certifies that a true copy of the foregoing answer was delivered to Jack N. Herod and

Gordon W. Poindexter, Jr., counsel for the petitioners, on the 25th day of January, 1961.

J. E. DRINARD
City Attorney for the City of Richmond and Counsel for W. L. Groth, Director of Public Safety of the City of Richmond, Virginia.

• • • • •

CITY OF RICHMOND
RICHMOND, VIRGINIA

Department of Public Safety
Bureau of Traffic Engineering
900 East Broad Street
4th Floor

February 28, 1956.

To:
From: Bureau of Traffic Engineering
Subject: "No Parking—Funeral" signs — Procurement, Placement, Removal, and Replacement

In accordance with Ordinance No. 56-15 and the attached Traffic Order No. 1356, you are hereby authorized to procure "No Parking—Funeral" signs from our Paint Shop located at 300 West Canal Street.

These signs are to be placed only at the following location (s):

. . . . . .
. . . . . .

This Bureau strongly urges strict compliance with the provisions of Traffic Order No. 1356, as any violations may result in revocation of these privileges.

H. K. PERKINS, JR.
Acting Traffic Engineer

HKPjr/pwd

TRAFFIC ORDER NO. 1356

1. Funeral directors, or their employees, shall place "No Parking—Funeral" signs on streets in the vicinity of funeral parlors as designated by the Bureau of Traffic Engineering, in advance of any funeral in accordance with the following conditions:

a. Signs shall be placed out on the night preceding the day of the funeral on any streets where unrestricted parking is permitted.

b. A minimum of two hours in advance of the funeral on streets where parking is limited to one hour or less.

c. A minimum of four hours in advance of the funeral on any streets where parking is limited to two hours.

2. No other persons save for members of the Bureau of Traffic Engineering or Bureau of Police shall be authorized to place these signs.

3. Funeral directors shall obtain necessary signs from the Paint Shop located at 300 West Canal Street and shall replace signs as they become bent, broken, defaced, or otherwise illegible. They may be replaced at 300 West Canal Street at no cost.

4. Funeral directors shall use their discretion in placing signs in the vicinity of private homes or churches. In case of any doubt, the Bureau of Traffic Engineering or the Bureau of Police will be contacted for exact placement of signs.

5. A minimum of four signs shall be placed in average length blocks (300 ft.) and a minimum of two signs in 1/2 blocks. Unusually long blocks or blocks obscured by shrubs, trees, vegetation or other sight restrictions will require additional signing.

6. Funeral directors or their employees shall roll the signs away from the curb immediately after the procession has become mobilized.

7. All signs shall show the exact time of the funeral on the space provided for this purpose.

A Copy—Teste:

H. G. TURNER, Clerk.

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