

May 6, 2002

To the Honorable  
The Common Council of the  
City of Milwaukee  
Room 205 – City Hall

**Re: *Deida v. City of Milwaukee, et al.*; Case No. 01-C-0324**

Dear Council Members:

Enclosed is a resolution recommending settlement of the attorney's fees and costs in the above-referenced matter. We ask that the resolution be introduced and referred to the Committee on Judiciary and Legislation for their recommendation.

This case arose out of the arrest of Rosemary Deida for placing religious tracts under the windshield wipers of vehicles, in violation of Milwaukee City Ordinance 101-3, which adopts § 346.94, Wis. Stats. The ordinance and statute prohibit the placement of leaflets on vehicles on a public highway. The ordinance and statute, however, permits the placement of educational materials relating to the parking privileges of the physically disabled on vehicles that appear to be illegally parked in spaces reserved for the physically disabled.

The United States District Court for the Eastern District of Wisconsin, the Honorable Lynn Adelman presiding, held the ordinance and statute unconstitutional under the First Amendment, which grants to the people the right to speak freely. The court held that the restriction was not content-neutral, and that there was no compelling governmental interest to justify the restriction. The court issued a permanent injunction against enforcement of the ordinance to the extent it adopts § 346.94(4), Wis. Stats., and awarded attorney's fees and costs under 42 U.S.C. § 1988. We have concluded that an appeal of the court's decision is not warranted.

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Counsel for the plaintiff applied to the court for \$20,592.21 of attorney's fees and costs. We objected to portions of the fees' request and plaintiff's counsel has agreed to settle his claim for \$12,614.71. We believe this settlement is in the best interests of the City.

Attached is an appropriate resolution for your consideration.

Very truly yours,

GRANT F. LANGLEY  
City Attorney

RUDOLPH M. KONRAD  
Deputy City Attorney

RMK:lmb  
enclosures  
1081-2001-1040/53281