



New Jersey Libertarian Party

Preempted Ordinance Repeal Project

John Paff, Chairman

P.O. Box 5424

Somerset, NJ 08875-5424

Phone: 732-873-1251- Fax: 908-325-0129

Email: lpsmc@pobox.com

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Hon. David Scapicchio, Mayor, and
Members of the Mount Olive Township Council
P.O. Box 450
Budd Lake, NJ 07828

(via PDF email to clerk@mtolivetwp.org)

Dear Mayor Scapicchio and Members of the Township Council:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Preempted Ordinance Repeal Project. I ask that you a) request Mount Olive's municipal attorney to render an opinion on the validity of Chapter 178, the "Peace and Good Order" ordinance, and b) introduce an ordinance to repeal those parts of Chapter 178 that the attorney finds to be invalid.

Some of the sections, such as § 178-4 (loitering) and § 178-19 (vagrancy) are invalid because the New Jersey Legislature, when enacting the Criminal Code in the late 1970s, specifically decided to **not** include those types of prohibitions within the Code. (The Legislature was concerned that "vagrancy and loitering statutes have long suffered from constitutional infirmity and have been criticized as inviting official harassment and discriminatory enforcement." State v. Crawley, 90 N.J. 241, 247 (1982)) It follows that no municipality, such as Mount Olive, is allowed to locally prohibit loitering and vagrancy after the Legislature has decided to decriminalize them. Id. at 251.

Other sections, such as § 178-11 (False Alarms) are invalid because the Legislature has passed comprehensive legislation (N.J.S.A. 2C:33-3 prohibiting "False Public Alarms") that intends to regulate this conduct statewide and leaves no room for local legislation on the same topic. See N.J.S.A. 2C:1-5d and State v. Felder, 329 N.J. Super. 471 (App. Div. 2000)

Unfortunately, getting municipalities to ask their attorneys to opine on an ordinance's validity is often not as easy and straightforward as it may appear. As a representative of the New Jersey Libertarian Party who has attempted to get similar ordinances repealed statewide, I have encountered substantial resistance to my efforts. What I've found, bluntly, is that elected municipal officials sometimes know, or at least suspect, that their loitering, vagrancy and similar ordinances are invalid but are afraid to question them lest they be regarded as "soft on crime." Or, perhaps, more insidiously, they wish to keep these ordinance on the books so that the local police can use them to harass

those who have committed no actual crime, but who, by their very presence, cause other people to feel uneasy. Hopefully, the Mount Olive Council will be bold and upfront enough to ask the municipal attorney to render a legal opinion on the validity of these ordinances.

Thank you for your attention to this matter. I look forward to learning whether you are willing to ask your municipal attorney for his opinion on Mount Olive's "Peace and Good Order" ordinance.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paff", with a large, stylized flourish above the name.

John Paff