



New Jersey Libertarian Party

Preempted Ordinance Repeal Project

John Paff, Chairman

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May 25, 2011

Hon. Victor DeLuca, Mayor and members of the
Maplewood Township Committee
574 Valley St
Maplewood, NJ 07040

(via e-mail only to twpclerk@twp.maplewood.nj.us)

RE: State v. White
Complaint No. SC-2010-012871

Dear Mayor DeLuca and Committee members:

I write both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Preempted Ordinance Repeal Project.

On May 9, 1977, New Jersey's Alcoholism Treatment and Rehabilitation Act, N.J.S.A. 26:2B-1, et seq. ("ATRA") became effective. The ATRA provided, in pertinent part, that "no county, municipality, or other jurisdiction within [New Jersey] shall adopt an ordinance . . . creating an offense of public intoxication or any equivalent offense," and that "any existing ordinance . . . creating such an offense is . . . repealed." N.J.S.A. 26:2B-29.

On November 5, 2008, more than 30 years after ATRA became effective, the Maplewood Township Committee repealed¹ Chapter 110-1A of its municipal code, which read:

It shall be unlawful for any person to be under the influence of intoxicating liquor or drugs or in an intoxicated condition upon the streets, sidewalks or public places or on other property not his own.

Despite the ATRA and the code repeal, Police Officer Scott T. Reeves issues the captioned complaint on April 17, 2010, which charged Quwan J. White of 71 Prospect St, Irvington, with "public intoxication." A copy of the front and back of the complaint is attached as Exhibit page 3. As you can see, Officer Reeves cited Code Chapter 110-1A on the face of the complaint even though that chapter had been repealed a year and a half earlier.

¹ The newspaper advertisements referencing the repeal are attached as Exhibit Pages 1 and 2.

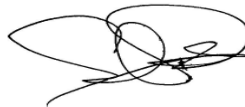
You will also note that on April 26, 2010, the Maplewood Municipal Court convicted White of the offense after receiving his guilty plea and assessed \$80 in fines and costs.

It appears to us that Mr. White was convicted of a code provision that was not in effect when the alleged "offense" was committed. If further appears to us that even if the code provision was in effect, it would have been invalid as having been preempted by a New Jersey statute that was passed more than 30 years prior.

We are, frankly, bewildered as to how this could have occurred. Do you agree that it would be appropriate for the police department and municipal court to immediately discuss this issue and establish some safeguards to prevent its recurrence?

Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to be "John Paff", with a large, stylized flourish at the end.

John Paff

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Public Notice

Public Notice:

MAPLEWOOD TOWNSHIP OF MAPLEWOOD ORDINANCE # 2567-08 AN ORDINANCE
TO AMEND
CHAPTER 110
OF THE CODE
OF THE TOWNSHIP OF
MAPLEWOOD "Interpretive Statement"

This ordinance will remove Sub-section A with regard to public intoxication. WHEREAS, N.J.S.A. 26:2B-16 addresses the issue of persons intoxicated in public places; and WHEREAS, the aforementioned State Statute adequately addresses the issue of public intoxication;

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Maplewood, County of Essex, State of New Jersey that: Chapter 110 of the Code of the Township of Maplewood entitled "Disorderly Conduct" be amended as follows: FIRST: Section 110-1 Prohibitions Subsection A.

It shall be unlawful for any person to be under the influence of intoxicating liquors or drugs or in an intoxicated condition upon the streets, sidewalks or public places or on other property not his own.

Be and is hereby deleted. SECOND:

All other Sections of Chapter 110 shall remain unchanged.

THIRD:

Severability

If any section, paragraph, subparagraph, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the specific section, paragraph, subparagraph, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

FOURTH:

Repeal of Prior Ordinances

Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance be and the same are hereby repealed to the extent of any such inconsistencies.

Effective Date

This Ordinance shall take effect after final passage and publication and as provided by law. PUBLIC NOTICE is hereby given that the foregoing proposed Ordinance was introduced and read by title for the first time at a meeting of the Township Committee of the Township of Maplewood, held on October 21, 2008, and that Committee will meet again on November 5, 2008, at 7:30 p.m. at the Municipal Building, 574 Valley Street, Maplewood, New Jersey, at which time and place the Committee will proceed to consider the said Ordinance on second reading and final passage. ELIZABETH J. FRITZEN,
R.M.C., C.M.C.
Township Clerk

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Public Notice

Public Notice:

MAPLEWOOD TOWNSHIP OF MAPLEWOOD PASSED ORDINANCE # 2567-08 AN ORDINANCE TO AMEND CHAPTER 110 OF THE CODE OF THE TOWNSHIP OF MAPLEWOOD "Interpretive Statement"

(This ordinance will remove Sub-section A with regard to public intoxication.)

The ordinance of which the foregoing is the title, passed on final reading at a regular meeting of the Township Committee of the Township of Maplewood, in the County of Essex, New Jersey held November 5, 2008. KENNETH A. PETTIS
CHAIRPERSON ELIZABETH J. FRITZEN,
R.M.C., C.M.C., C.M.R.
Township Clerk e225986 mnr Nov. 13, 2008 (\$16.20)

Public Notice ID: 8506760.HTM

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The State of New Jersey

Defendant's Name: First Quinn Initial J. Last White
 Address 71 Prospect St. City Irvington
 State NJ Zip Code 07111 Telephone _____
 Birth Date: 04 22 85 M BRN Eyes BRN Height _____ Restrictions _____
 Driver's License # W3S126377104852 State NJ Exp. Date 3/31/10

STATE OF NEW JERSEY COUNTY OF ESSEX JSS:

Complaining Witness: P.O. Reeves
of Maplewood Police Dept #371
Residing at 1618 Springfield Ave

by certification or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the 04 17 2010 0200 in MAPLEWOOD 0711 County of ESSEX N.J.

did commit the following offense: Public Intoxication

in violation of (one charge only) 110-1A (Statute, Regulation or Ordinance Number)

LOCATION OF OFFENSE 126 Bayden Ave.

OATH: Subscribed and sworn to before me this _____ day of _____ yr _____

OR

CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

4/17/10 (Date)

(Signature of Complaining Witness)

(Signature of Complaining Witness)

(Signature of Person Administering Oath)

PROBABLE CAUSE DETERMINATION FOR ISSUANCE OF PROCESS:

COURT USE ONLY

LAW ENFORCEMENT USE ONLY

Probable cause is found for the issuance of this Complaint-Summons.

The complaining witness is a law enforcement officer and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

YES NO (Signature of Judicial Officer)

YES NO (Signature of Judge)

YOU ARE HEREBY SUMMONED TO APPEAR

BEFORE THIS COURT TO ANSWER THIS COMPLAINT IF YOU FAIL TO APPEAR ON THE DATE AND AT THE TIME STATED, A WARRANT MAY BE ISSUED FOR YOUR ARREST.

NOTICE TO APPEAR

COURT APPEARANCE REQUIRED COURT DATE 04 26 10 5:15 AM PM

DATE OF REQUIREMENTS

FROM: _____

REASON: Plea G

FROM: _____ TO: _____

REASON: G

DEPOSITION DATE: _____

BY: COURT VIOLATIONS BUREAU

PLEA: _____ FINDING: _____

BAIL AMOUNT \$ _____ CASH BOND

POSTED WITH: _____

(NAME & TITLE)

BAIL FORFEITURE AMOUNT \$ _____ DATE _____

FINE \$ 20 JAIL _____ DAYS _____

COSTS \$ 20 DR. LIC. REVOKED _____ DAYS _____

REVOCATION DATE: _____

4/20/10 J-Vc

NO.	YES	NO
1. _____	<input type="checkbox"/>	<input type="checkbox"/>
2. _____	<input type="checkbox"/>	<input type="checkbox"/>
3. _____	<input type="checkbox"/>	<input type="checkbox"/>