

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

SECTION 5

NO. 10-9732

DIVISION "R"

SECTION " "

DARLENE WASHINGTON-WAPEGAN, CAROLYN BLACKMAN, JOSEPH E. ALVEREZ, AND CORINNE DUCRE

VERSUS

CITY OF NEW ORLEANS

LET THIS CASE BE RE-ALLOTTED TO SECTION 13

COLIVE 9-21-10

FILED:

DEPUTY CLERK

PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION

The Petition of Darlene Washington-Wapegan, Carolyn Blackman, Joseph E. Alvarez, and Corinne Ducre, all of full age of majority and domiciled in the Parish of Orleans, respectfully represents:

1.

Made defendant herein is City of New Orleans, a political subdivision of the State of Louisiana, United States of America.

2.

The defendant is liable unto petitioner herein for such damages as are reasonable in the premises, together with legal interest thereon from the date of judicial demand until paid, for attorney fees, and for all costs and disbursements of these proceedings for the following reasons, to wit:

FACTS

3.

On or about February 15, 2007, the City of New Orleans, implemented a new Automated Traffic Enforcement System throughout the City of New Orleans. The ATES uses cameras to issue traffic tickets to motorist who run red lights, exceed the speed limit of 20 mph in a school zone, or exceed 35 mph in a school zone during non-school zone hours.

1 C-C out 9/23/10

ENTERED RULE DOCKET/COMPUTER SERVICE COPIES TO SHERIFF CARDS WITH RULE DATE MAILED COPY OF DOCUMENT MAILED RULE DATE RECEIVED

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TOTAL PAID CASE # 2000097229 \$676.00

DATE: 9/23/10
Cynthia L. Mollaire
Deputy Clerk
9/23/10

On August 3, 2010, Petitioner Darlene Washington-Wapegan was allegedly photograph by a traffic ticket camera, and shortly thereafter, received a traffic citation in the mail identified as Notice #: 0801001409789¹.

5.

On December 27, 2009, Petitioner Carolyn Blackman was allegedly photograph by a traffic ticket camera, and shortly thereafter, received a traffic citation in the mail identified as Notice #: 0801000021411².

6.

On July 24, 2010, Petitioner Carolyn Blackman was allegedly photograph by a traffic ticket camera, and shortly thereafter, received a traffic citation in the mail identified as Notice #: 0801001336263³.

7.

On March 16, 2010, Petitioner Carolyn Ducre was allegedly photograph by a traffic ticket camera, and shortly thereafter, received a traffic citation in the mail identified as Notice #: 0801000500547⁴.

8.

On July 25, 2010, Petitioner Joseph E. Alvarez was allegedly photograph by a traffic ticket camera, and shortly thereafter, received a traffic citation in the mail identified as Notice #: 0801001341073⁵.

LAW AND ARGUMENT

Article XVII of the New Orleans City Code, the Automated Traffic Enforcement System, Violates the Home Rule Charter of the City of New Orleans

9.

The Home Rule Charter of the City of New Orleans empowers the Department of Police with the sole authority to enforce traffic regulations such as running a red light or speeding as follows:

CHAPTER 5. DEPARTMENT OF POLICE

Section 4-501. Functions.

¹ See Exhibit 1 (Notice #: 0801001409789).

² See Exhibit 2 (Notice #: 0801000021411).

³ See Exhibit 3 (Notice #: 0801001336263).

⁴ See Exhibit 4 (Notice #: 0801000500547).

⁵ See Exhibit 5 (Notice #: 0801001341073).

The Department of Police, headed by a Superintendent of Police, shall:

* * * * *

(2) Enforce traffic regulations and investigate traffic accidents.

10.

The Home Rule Charter of the City of New Orleans does not empower the Department of Public Works with the authority to enforce traffic regulations such as running a red light or speeding as follows:

CHAPTER 9. DEPARTMENT OF PUBLIC WORKS

Section 4-901. Functions.

The Department of Public Works, headed by a Director of Public Works, shall:

- (1) Provide for the design, construction, paving, maintenance, and marking of streets, bridges, and related structures and approaches.
- (2) Supervise, regulate and control installations in, above or under streets.
- (3) Establish elevations and control grades of streets.
- (4) Collect and compile traffic data as directed by the Mayor or by ordinance; prepare engineering studies with regard to vehicular and pedestrian traffic as directed by the Mayor or by ordinance; prescribe regulations governing traffic and parking on streets and other public places; and determine the type, need, and location of all traffic control devices and markings and install, design, construct, operate, and maintain them.
- (5) Coordinate construction and maintenance projects with other departments, boards, and agencies of government and public utilities.
- (6) Coordinate or manage public works projects in the process of construction or acquisition and monitor their present status, the amounts spent or to be spent thereon, and the work required to complete each undertaking with a schedule for such completion.
- (7) Keep the Mayor, the Council, the Chief Administrative Officer, and the City Planning Commission informed as to the status of public construction and maintenance projects.
- (8) Recommend terms to be incorporated in contracts for supplying utility services for City buildings or facilities and for supplying street lighting services to the City and shall supervise performance under such contracts.
- (9) Perform such other duties as are required by this Charter or assigned in writing by the Mayor.

Annotations: Sec. 4-901. Functions. The duties herein described in sub-section (8) were formerly performed by the now dissolved Department of Utilities.

11.

The City of New Orleans has never amended the City Charter to authorize the Department of Public Works to enforce traffic regulations, according to the procedure in Section 4-103 of the City Charter, as for provided for in the Charter for re-assigning functions as follows:

Section 4-103. Other Administrative Agencies Prohibited.

The names, functions, or assignment of functions of departments, officers, ... may be amended, ... in accordance with the provisions of Section 9-201(2)⁶, ... except for the ... Departments of ... Police ... which shall be subject to amendment only in accordance with Section 9-201(1)⁷.

12.

Consequently, all Notices of Violation, fines, late fees, and interests, have been collected illegally and without authority in violation of the Home Rule Charter of the City of New Orleans.

13.

As a result of the illegal traffic tickets that have been issued to both residents and visitors by the City of New Orleans through enforcement activities, a large number of persons residing or visiting Orleans Parish have incurred unwarranted civil fines and delinquent penalty assessments.

14.

⁶ **Section 9-201. Method of Amendment.** (2) Except for the sections pertaining to the Mayor, the Administrative Office, and the Departments of Law, Police, Fire, Finance, and City Civil Service, amendments to Article IV of this Charter to rename or reassign powers or functions of departments or boards or to consolidate, subdivide, reorganize, or abolish departments or boards may be initiated by an executive order of the Mayor, which shall be published once in the official journal and submitted to the Council on or before the date of such publication for public review and comment. The Council shall hold a public hearing on the proposed amendment. The Council shall not alter the terms of the proposed amendment, but may vote to approve or disapprove the measure. If approved by a majority vote of the entire membership of the Council, the amendment shall become legally effective upon certification by the Clerk of the Council or at a later date if so specified in the executive order. If disapproved by a majority vote of the entire membership of the Council, the amendment shall not become legally effective. If the Council neither approves nor disapproves within sixty days of the date of publication of the executive order, the amendment shall become legally effective upon the expiration of such sixty days or at a later date if so specified in the executive order. Any amendment thus adopted shall be published promptly after its adoption in the official journal, and duly authenticated copies of the amendment shall be filed promptly by the City Attorney in the offices of the Secretary of State, the Recorder of Mortgages, and the Clerk of Council. This method of amendment may not be utilized during the last year of a term in office for the Mayor and members of the City Council.

⁷ **Section 9-201. Method of Amendment.** (1) Except as provided in subparagraph 2 of this section, this Charter may be amended or replaced only by the affirmative vote of a majority of the qualified electors of the City voting upon such amendments or proposed Charters. Proposals to amend or replace this Charter by the affirmative vote of a majority of the qualified electors of the City voting thereon may originate only in the following manner:

(a) By ordinance of the Council.

(b) By petition of not less than ten percent or ten thousand, whichever is fewer, of the duly qualified registered voters of the City filed with the Council, setting forth the proposed amendments or substitute home rule Charter. This method of amendment shall apply to the entirety or any portion of this Charter.

These illegal fines and delinquent penalty assessments have been collected illegally by defendant, City of New Orleans, through the United States mail, via the internet, and in person.

15.

The conduct of Defendant constitutes negligence by its failure to ensure that the law provided legal authority for the issuance of traffic camera citations for (1) failure to stop at a red light, (2) exceeding the speed limit of 35 mph, and (3) exceeding the speed limit of 20 mph in a school zone, and all other acts of negligence as may be proven and established at trial.

16.

As long as these illegal laws remain a part of the City Code of the City of New Orleans, it is a certainty that the City of New Orleans will continue repeat the wrongful enforcement of illegal traffic laws and the collection of illegal fines.

17.

There exists a substantial public interest presented herein -- allowing a vote of the citizens of the City of New Orleans to decide whether to allow the Automated Traffic Enforcement System -- where the question presented is of a public nature, the complained-of conduct is likely to recur, and an authoritative resolution is desirable to guide public officers.

18.

Therefore, this court should issue preliminary injunction, and subsequently, permanent injunctive relief, prohibiting the City of New Orleans, from implementing the Automated Traffic Enforcement System or otherwise issuing speeding or red-light tickets using an automated commercial ticketing system until the question of the desirability of such a system is put to a vote of the Citizens of New Orleans.

WHEREFORE, petitioners, Darlene Washington-Wapegan, Carolyn Blackman, Joseph E. Alvarez, and Corinne Ducre pray:

(1) For injunctive relief, in the form of a preliminary injunction, and subsequently, permanent injunctive relief, prohibiting the City of New Orleans, the City of New Orleans Department of Public Works, and any other city or municipal officials, agents, officers, employees, boards, or corporations, and all others claiming to act in their behalf from implementing the Automated Traffic Enforcement System or otherwise issuing speeding or red-light tickets using an automated commercial ticketing system;

(2) That plaintiff be awarded all damages allowable by law, damages for annoyance, inconvenience, and mental distress, together with costs, attorneys' fees, and legal interest from the date of judicial demand and against defendant, the City of New Orleans;

(3) That Notice of Violations 0801001409789, 0801000021411, 0801001336263, and 0801000500547 be dismissed by the City of New Orleans;

(4) That Defendant be served with a copy of this Petition for Damages and be cited to appear and answer thereto within the delays allowed by law;

Respectfully submitted,



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The Washington Law Group, LLC
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New Orleans, Louisiana 70128
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Fax | (504) 324-0181
ed@edwashington.com

PLEASE SERVE:

City of New Orleans
Through its Agent for Service of Process:
Nannette Joilette-Brown
City Attorney
1300 Perdido Street, Room 5E03 - City Hall
New Orleans, Louisiana 70112

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 10-

DIVISION " "

SECTION " "

DARLENE WASHINGTON-WAPEGAN, CAROLYN BLACKMAN, JOSEPH E. ALVEREZ, AND CORINNE DUCRE

VERSUS

CITY OF NEW ORLEANS

FILED: _____

DEPUTY CLERK


VERIFICATION

STATE OF LOUISIANA
PARISH OF ORLEANS

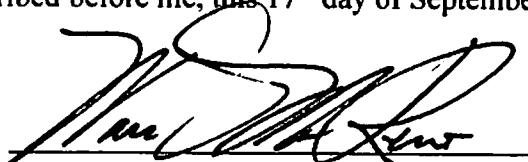
BEFORE ME, the undersigned authority, personally came and appeared:

Edward R. Washington, III

who, having been duly sworn, deposed and stated unto me, Notary, pursuant to LCCP Article 3603(B), that he has read the petition, and examined the documents associated with this matter and that the allegations of facts and circumstances contained in the petition are true and correct to the best of his knowledge, information and belief.


Edward R. Washington, III

Sworn to and subscribed before me, this 17th day of September, 2010.


NOTARY PUBLIC



WARREN R. McKENNA, III
NOTARY PUBLIC
LSBA NO. 24583
MY COMMISSION IS FOR LIFE.

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 10-

DIVISION " "

SECTION " "

DARLENE WASHINGTON-WAPEGAN, CAROLYN BLACKMAN, JOSEPH E. ALVEREZ, AND CORINNE DUCRE

VERSUS

CITY OF NEW ORLEANS

FILED: _____ DEPUTY CLERK

ORDER

The foregoing petition considered:

IT IS ORDERED THAT:

1. Defendant be served with a copy these pleadings;
2. Defendant show cause, if any it can, on the 01st day of October, 2010 at o'clock 9:00 a.m. why a preliminary injunction, as prayed for should not be entered prohibiting the City of New Orleans, the City of New Orleans Department of Public Works, and any other city or municipal officials, agents, officers, employees, boards, or corporations, and all others claiming to act in their behalf from implementing the Automated Traffic Enforcement System or otherwise issuing speeding or red-light tickets using an automated commercial ticketing system;
3. The application in this matter is to be heard upon the verified pleadings and/or supporting affidavits. A copy of this order shall be served upon the defendant in accordance with C.C.P. 3609.

New Orleans, Louisiana, this 21st day of September, 2010.

Paula...
JUDGE, ORLEANS PARISH CIVIL DISTRICT COURT

SEP 22 2010
EXAMINED ON AFFIDAVITS

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA FILED

NO. 10-9732

DIVISION "M"

100 OCT -1 A 8:43 SECTION "13"

DARLENE WASHINGTON-WAPEGAN, CAROLYN BLACKMAN, JOSEPH E.
ALVEREZ, AND CORINNE DUCRE CIVIL

DISTRICT COURT

VERSUS

CITY OF NEW ORLEANS

FILED: _____

DEPUTY CLERK

**REPLY MEMORANDUM TO THE CITY OF NEW ORLEANS MEMORANDUM IN
OPPOSITION TO PRELIMINARY INJUNCTION**

In *Piazza's Seafood World, LLC v. Odom*, 6 So.3d 820 (La. App., 2008), the Commissioner of the Department of Agriculture and Forestry for the State of Louisiana (the Commissioner) sought to regulate seafood, which was within the exclusive jurisdiction of another state agency, the Louisiana Department of Health and Hospitals. The First Circuit instructed "[g]enerally, a party seeking the issuance of a preliminary injunction must show that it will suffer irreparable injury if the injunction does not issue and it must show entitlement to the relief sought. However, a showing of irreparable injury is not necessary when the act sought to be enjoined is unlawful. *Dale v. Louisiana Secretary of State*, 07-2020 (La.App. 1 Cir. 10/11/07), 971 So.2d 1136, 1141." (Emphasis added) In finding that the Commissioner exceeded his authority, the *Piazza* Court stated:

The regulations promulgated by an agency may not exceed the authorization delegated by the Legislature. *State v. Alfonso*, 99-1546 (La.11/23/99), 753 So.2d 156, 162. An agency is not free to pursue any and all ends, but can assert authority only over those ends that are connected to the task delegated by the legislative body. *Id.*; *Realty Mart, Inc. v. Louisiana Bd. of Tax Appeals*, 336 So.2d 52, 54 (La.App. 1 Cir.1976). Because we have concluded that the regulation at issue was promulgated without legislative or constitutional authority, we find that the district court properly issued a preliminary injunction enjoining the Commissioner's authority to enforce the unlawful regulation. See *Star Enterprise*, 676 So.2d at 834. Considering the evidence in the record before us, we find that the district court acted within its sound discretion in granting the preliminary injunction in this case. See *Dale*, 971 So.2d at 1141.

In the instant matter, the City has similarly exceeded the authorization found in its own City Charter, and the ordinances were promulgated contrary to law.

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In *Derbes v. City of New Orleans*, 941 So.2d 45 (La.App., 2006), James Derbes sought to enjoin the City of New Orleans from preventing the holding paid events, mostly wedding receptions and similar social events at Derbes' bed and breakfast -- the Benachi House. The City contended the activity violated the zoning code. The 4th CIVIL CIRCUIT COURT of Appeals, acknowledged that "In order to prevail at a hearing for preliminary injunction, the moving party must show ... (1) that the injury, loss or damage he will suffer if the injunction is not issued may be irreparable; (2) that he is entitled to the relief sought; and (3) that he will be likely to prevail on the merits of the case.

Importantly, the *Derbes* Court also pointed out that "the Louisiana Supreme Court has stated 'a showing of irreparable harm is not required in cases where the conduct sought to be restrained is unlawful.'"¹ Thus, the 4th Circuit upheld the injunction issued by Judge Yada Magee based upon her determination that the 10 years in which the City had to bring an action for a zoning violation had expired, and therefore any attempt by the City to enforce the Comprehensive Zoning Ordinance, with respect to event rentals, would be unlawful.

Here, the City is in violation of its own City Charter. Its actions are equally unlawful. Therefore, as in *Derbes*, a showing of irreparable harm is not required, because the conduct sought to be restrained is unlawful.²

The Department of Public Works has historically been an equipment and streets maintenance department. It was formerly named the Department of Streets and many citizens still refer to it as the "Streets Department." On the other hand, the Department of Police has

¹*Id.* at 54, citing *Jurisich v. Jenkins*, 749 So.2d 597 (La.1999); see also *Smith v. City of Alexandria*, 420 So.2d 1329 (La.App. 3d Cir.1982); *Budd Construction Co., Inc. v. City of Alexandria*, 401 So.2d 1070 (La.App. 3rd Cir.), writ denied, 404 So.2d 1262 (La.1981); *Caffery v. Powell*, 320 So.2d 223 (La.App. 3d Cir.1975).

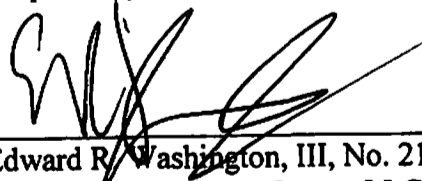
² See also *Davis v. Town of St. Gabriel*, 809 So.2d 537, 542- 543 (La. App., 2002) (It is settled in the jurisprudence that if the action or conduct complained of is unlawful, a showing of irreparable injury is not necessary or a prerequisite to obtaining injunctive relief. *State Through Louisiana State Board of Examiners of Psychologists of Dept. of Health and Human Services v. Atterberry*, 664 So.2d 1216, 1220 (La.App. 1 Cir.1995); *Guzzardo v. Town of Greensburg*, 563 So.2d 424, 427 (La.App. Cir.1990); *Hays v. City of Baton Rouge*, 421 So.2d 347, 349 (La.App. 1 Cir.1982)); *Whalen v. Brinkman*, 258 So.2d 145 (La.App. 1st Cir. 1972) (A plaintiff does not have to prove irreparable injury when he seeks to enjoin defendant from a course of action forbidden by law); *Dale v. Louisiana Secretary of State*, 07-2020 (La.App. 1 Cir. 10/11/07), 971 So.2d 1136, 1141 (A showing of irreparable injury is not necessary when the act sought to be enjoined is unlawful); *Miller v. Knorr*, 553 So.2d 1043 (La. App. 4 Cir., 1989) (a showing of irreparable injury is a prerequisite to injunctive relief only where the actions to be enjoined are lawful. The violation of a zoning ordinance is unlawful. Thus, irreparable injury need not be proven) citing *City of New Orleans v. National Polyfab Corp.*, 420 So.2d 727 (La.App. 4th Cir.1982); *Bossier v. Lovell*, 410 So.2d 821 (La.App. 3d Cir.1982)).

always, and still does regulate traffic, including red lights, speeding in school zones, and speeding in general. Moreover, in its duties to investigate traffic accidents, the police officers are keenly aware of the harms that running red lights and speeding can inflict on the public. Thus, the drafters of the City Charter appropriately designated the Department of Police with the charge of regulating traffic. On the other hand, with revenue generation as its sole objective, the Department of Public Works has reduced any speeding ticket or running of a red-light to a civil penalty with a maximum fine of less than a couple of hundred dollars. Where running a red-light 10 seconds after it is red or speeding through a school zone at 100 miles per hour might appropriately land you in jail when regulated by the Department of Police, to the Department of Public Works – just fill the City coffers and come back soon.

Granting an injunction is appropriate without the necessity of posting bond when the action of the legislative body is acting beyond its powers. In *Parish of Ouachita Through Ouachita Parish Police Jury v. Town of Richwood*, 697 So.2d 623 (La. App. 2 Cir., 1997), after a hearing on the rule for the injunction and the exceptions on September 25, 1996, the trial court issued a preliminary injunction, without bond, prohibiting the Board from adopting and/or enforcing the proposed annexation ordinance of lands which are not contiguous. In upholding the trial court's action, the Appeals Court observed "It has long been established that an injunction is available and will be issued against a legislative body which has taken, or is threatening to take, action which is ultra vires."³

An injunction will not prevent the enforcement of red-light laws or speeding violations, it will just return the charge of regulating traffic to its proper and appropriate agency. And, the citizens of New Orleans will rightfully decide whether the Department of Public Works should regulate traffic.

Respectfully submitted,



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³ *Id.* at 628 citing *Connell v. Commission Council of City of Baton Rouge*, 153 La. 788, 96 So. 657, (1923)).

CERTIFICATE

I hereby certify that a copy of the foregoing has been mailed to all counsel of record by facsimile and/or certified and/or regular United States mail, postage prepaid on this 1st day of October, 2010.

A handwritten signature in black ink, appearing to read 'E. R. Washington, III', written over a horizontal line.

EDWARD R. WASHINGTON, III

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