

From: Richard Hopp
P O Box 3601
Van Nuys, California 91407
Telephone (818) 902-0532
Email: Mail@MrHopp.com

Common Council Meeting
Tuesday, October 4 2011 at 6:30 p.m.
Room 201, City-County Building
October 4th, 2011

Re: Memorandum of Secondhand Dealer Law¹ and Opposition to Amend City of
Madison, Wisconsin, Municipal Code §9.24

Subject: Whether the exclusive buying of used goods, tangible personal property, or
articles² requires a secondhand dealer permit³?

What defines the business of a secondhand article dealer?

Rule: One way the public avoids paying retail is purchasing used and recycled tangible
personal property through eBay, swap meets, auctions, garage sales, and thrift stores.

Law enforcement deem that activities engaged in or caused to be engaged in with the
objective of attaining direct or indirect gain, benefit or advantage are a business. Thus, the
buying of used goods and chattels through any of the foregoing mediums constitutes engaging in
a secondhand dealer business and requires application, regulation, and enforcement, including,
but not limited to, warrantless inspections⁴, administrative searches⁵, daily reporting, and
employing a ruse to gain entry without a search warrant.

¹ Documents and audio recording specific to this memorandum can be found at
www.BuyingItAll.com

² Wisconsin Statue (2011) 134.71(1)(a)

³ Pursuant to City of Madison, Wisconsin, Municipal Code §9.24(3), the term secondhand dealer
means secondhand article dealer, secondhand jewelry dealer, and secondhand textbook dealer

⁴ Phillips, Robert C. The Fourth Amendment and Search & Seizure Tenth Edition January, 2010.
Web. 13 July 2011 <http://www.legalupdateonline.com/4th_10th.html>

⁵ City of New York v. Joseph Burger 482 U.S. 691, 107 S. Ct. 2636, 96 L. Ed. 2d 601, 1987 U.S.

Wisconsin Statute §134.71, defines the term secondhand article dealer in part "...who primarily engages in the business of purchasing or selling secondhand articles ..." The state code's use of the word purchasing is utilized in a disjunctive "or" format, not a conjunctive "and" format. State law and many county codes and municipal ordinances⁶ characterize anyone who is buying tangible personal property for any use, including, but not limited to, his/her own personal use, is required to maintain a secondhand dealer's permit. The failure to maintain a secondhand dealer's permit exposes one to criminal and civil penalties.

In the trial and subsequent appellate case *Richard Hopp v. City of Los Angeles*⁷ the position of the Los Angeles Police Department was that a person buying used tangible personal property is engaged in business, and thus required to apply for, obtain, and maintain a secondhand dealer permit.

Hopp is a case of first instance to define "business", "collector", and "dealer" at the appellate level. These terms were never previously addressed in a published appellate decision relating to police permits and the secondhand dealer issue.

Discussion: Charitable organizations provide funding, outreach, and services to assist the community through church and rummage sales. Members of the community will be discouraged from purchasing these items from these secondhand sources due to potential criminal exposure. In these economic times, where resources are spread thin, people with limited incomes benefit from the acquisition of essential items at reduced costs.

Most consumers are incapable of funding the legal battle to protect their freedom when confronting the bureaucratic institution of the state, county, and city. We need to amend and

⁶ City of Madison, Wisconsin, Municipal Code §9.24

⁷ *Richard Hopp v. City of Los Angeles*, (2010) 183 Cal.App.4th 713

better define the terms “secondhand dealer” and “business” through legislative means, to be conjunctive and comprehensible and no longer disjunctive and ambiguous. This change is to protect the hobbyist, collector, low income person, the disadvantaged, and bargain shopping public so as to no longer classify them as criminals. Amendment of the existing codes is needed to achieve their intended purpose, e.g., curtail the sale of stolen property to a “fence”,⁸ yet still allow a widow to buy a teapot.

Solution:

1. Request a legal opinion from the Wisconsin Attorney General regarding secondhand dealer’s laws:
 - a. Is a person subject to the regulation under Wisconsin Statutes, Chapter 134 of Miscellaneous Trade Regulations or City of Madison, Wisconsin, Municipal Code §9.24, to purchase tangible personal property or articles exclusively for personal use and not for resale? If yes, is the person or entity subject to warrantless inspections, administrative searches, and daily reporting?
 - b. Is a person or entity obligated to conduct diligent inquiry⁹ to buy used tangible personal property or articles?
2. Amend the City of Madison, Wisconsin, Municipal Code §9.24.

⁸ The term “fence” is “A colloquial characterization of a receiver of stolen property; one who receives and sells stolen goods.” (Black’s Law Dictionary, Sixth Edition, p. 618.)

⁹ The term “diligent inquiry” is “Such inquiry as a diligent man, intent upon ascertaining a fact, would ordinarily make, and it is inquiry made with diligence and good faith to ascertain the truth, and must be an inquiry as full as the circumstances of the situation will permit.” (Black’s Law Dictionary, Sixth Edition, p. 457-458.)

References:

Richard Hopp v. City of Los Angeles (2010) 183 Cal.App.4th 713; Case B215265

City of Madison, Wisconsin, Municipal Code §9.24

Nevada Revised Statutes §647.018.

04 Cal. Att'y Gen. Op. No. 04-1001 (April 6, 2005).

97 Cal. Att'y Gen. Op. No. 97-1009 (May 22, 1998).

96 Cal. Att'y Gen. Op. No. 95-814 (June 20, 1996).

Denny Malish v. City of San Diego (2000) 84 Cal.App.4th 725, 728.

Cordier, David A., Gabriel S. Dermer, P. J. Boren, J. Ashmann, and Todd J. Doi. Second Appellate District, Division Two. Los Angeles: Court of Appeal of the State of California, 25 Feb. 2010. MP3. <<http://www.BuyingItAll.com/>>.

California. California Department of Justice. Bureau of Criminal Information and Analysis. Second Dealer & Pawnbroker Laws. California Department of Justice, 1999. Web. 20 Apr. 2011. <<http://ossh.com/publications/secondhandi.pdf>>.

California. Los Angeles County Sheriff's Department. Santa Clarita Detective Bureau, Burglary/Fraud. Becoming a Secondhand Dealer or Pawnbroker. Comp. J. Anthony La Berge, Captain. Los Angeles County Sheriff's Department, Santa Clarita Valley Station, Jan. 2010. Web. 20 Apr. 2011. <<http://www.ci.santa-ana.ca.us/pd/documents/SecondhandDealerhandbook.pdf>>.