

CITY OF MADISON
INTER-DEPARTMENTAL
CORRESPONDENCE

AUG 23 1988

opinion
DIT DS 8/24/88
TK TR 9/2/88

TRANSPORTATION DEPT.
City of Madison

Date: August 23, 1988

To: Warren O. Somerfeld, Director of Transportation
From: Henry A. Gempeler, City Attorney
Subject: Granting Parking Spaces on Public Streets for Specific Businesses

You have requested an opinion as to whether the City of Madison can designate a specific parking spot(s) on a public street for a specific business. I am of the opinion that the City may not grant specific spots on public streets for specific businesses.

Chapter 349, Wis. Stats., governs the express regulatory powers given by the state to local authorities to enforce and enact traffic regulations. No local authority may enact or enforce any traffic regulation unless such regulation is not contrary to Chapters 341 to 348 and 350, or is expressly authorized elsewhere. Sec. 349.03, Wis. Stats. Section 349.13 lists the specific conditions and limitations under which a local authority may regulate the stopping, standing or parking of vehicles. Subsection (2) of Section 349.13 is applicable to the DOT's question of whether the City has the authority to designate a parking space on a public street for specific business. It provides:

(2) Except as provided in this subsection, neither the department nor local authorities may extend stopping, standing, or parking privileges to areas where stopping, standing, or parking is prohibited by Chapter 346.

It then goes on to list specific instances when a local authority may permit or designate parking, none of which include granting a business a designated parking space on a public street.

By granting the Concourse Hotel an exclusive parking spot where parking is already restricted, the City would be exceeding its authority by extending stopping, standing, or parking privileges to an area where stopping, standing, or parking is prohibited by Chapter 346. Sec. 346.53 provides:

No person shall stop or leave any vehicle standing in any of the following places except temporarily for the purpose of and while actually engaged in loading or unloading or in receiving or discharging passengers and while the vehicle is attended by a licensed operator so that it may promptly be moved in case of an emergency or to avoid obstruction of traffic:

Warren O. Somerfeld, Director of Transportation
August 23, 1988
Page 2

- (1) In a loading zone;
- (6) Upon any portion of a highway where and at the time when parking is prohibited, limited or restricted by official traffic signs.

The City does have the authority to permit persons to park their vehicles in a highway zone without regard to the time limits posted, but this permission is limited to persons whose residence abut a highway zone where parking is limited. Sec. 349.13(1g). The Concourse Hotel is a business, not a residence, and thus would not fall under this exception.

In conclusion, the City may not grant an exclusive parking space on the public streets to the Concourse Hotel, since such a grant to a private business is not expressly authorized by the state, in the vehicle code, and would be contrary to the parking restrictions found in Chapter 346.

If you have any further questions concerning this matter, please consult James L. Martin of my staff.


Henry A. Gempel
City Attorney

Summary: Parking on Public Streets: City can not grant specific spaces to specific businesses on public streets.

HAG:JLM:nlh

CITY OF MADISON
INTER-DEPARTMENTAL
CORRESPONDENCE

Date: October 28, 1988

To: Duane Hinz, Parking Manager
From: James L. Martin, Assistant City Attorney
Subject: SPECIAL PARKING SPACE AT MADISON CIVIC CENTER

On August 23, 1988, our office issued a formal opinion indicating that the City could not grant exclusive parking spots on public streets for private businesses. You have now come back with a slightly different question as to whether or not the City may grant specific parking spots on public streets for the Madison Civic Center. We remain of the belief that the City of Madison may not grant specific parking spots on public streets for specific businesses or agencies.

While I will not repeat our opinion of August 23, 1988 (copy attached), I would refer it to you for your review. Chapter 349, Wisconsin Stats., governs the express regulatory powers given by the State to local authorities to enforce and enact traffic regulations. Section 349.13, Stats., lists the specific conditions and limitations under which a local authority may regulate the stopping, standing or parking of vehicles.

In City of Madison v. Reynolds, 48 Wis. 2d 156, 158, 180 N.W.2d 7, (1970), the Wisconsin Supreme Court struck down a Madison General Ordinance which limited the use of University Avenue between Bassett Street, the Chicago, Milwaukee, St. Paul & Pacific railroad crossing to motorbuses and taxicabs. In striking down that ordinance, the Court stated: "It is beyond question, the State has absolute control of streets and highways and the city has no inherent power over them. Aside from its police and regulatory power, the only power a city has over the use of the streets must be delegated to it by the State. (Case cite omitted) The basic policy of the State has been to maintain control over the highways of this state and to maintain uniform regulation. To that end, local traffic enforcement must be consistent with the provisions of Chapters 341 through 348 of the Motor Vehicle Code or otherwise expressly authorized."

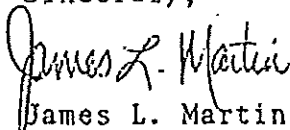
Section 349.03(1)(a), Stats. operates as an express limitation upon the police power of the City. In relevant part, this provision provides that: "...no local authority may enact or enforce any traffic regulation unless such regulation: (b) Is expressly authorized by secs. 349.06 to 349.25 or some other

Duane Hinz
October 28, 1988
Page 2

provision of the statutes. Section 349.13, Stats., does not grant the power to the City of Madison to specifically set aside parking spaces on public streets for the exclusive use of specific businesses, whether they be public or private. As a result, I remain of the belief that the City of Madison is without the power to so designate exclusive parking spots on public streets for the use of specific businesses or governmental agencies.

This report does not constitute a formal opinion of the City Attorney's office. If you have any further questions concerning this matter, please do not hesitate to contact me at 266-4511.

Sincerely,



James L. Martin
Assistant City Attorney

JLM:nh