

B. APPLICATION OF PROPOSED CONSUMER PROTECTION ORDINANCE TO OPERATIONS OF THE CHURCH OF SCIENTOLOGY

The proposed ordinance may be expected to have a broad impact upon consumer affairs in the City. The most important parts of the ordinance, vis-a-vis Scientology, are the education, warning, and investigation provisions. Vigorous use of these provisions would give members of the public vitally important information, before they become deeply involved in Scientology, as to what they may expect. Use of the investigation provisions would enable the City to develop detailed information about ongoing violations, and provide members of the public who have been cheated and defrauded by Scientology a convenient forum to seek a remedy. There is a vital need for public action of this sort in Clearwater for two reasons. First, the Scientologists have announced and are apparently now moving ahead with plans to entice Clearwater citizens directly into paying money to them, whereas previously their Clearwater facility has only been a magnet for people from other parts of the country. Second, people who have been cheated by Scientology presently have a difficult time securing private legal counsel to assist them in getting redress, because of the well-known vicious and abusive litigation tactics of the Scientologists. Both of these situations create an urgent need for the type of remedies proposed in the ordinance.

The ordinance has been intentionally drawn so that the above powers of the Commissioner are not dependent upon court action. This has been done in view of the anticipated legal hailstorm which the Scientologists will attempt to bring down on the ordinance as applied to them. Nonetheless, the specific

enforcement powers of the ordinance are important. The Commissioner is given the power to seek declaratory judgments that certain practices are illegal as well as injunctions. These actions may be expected to take longer, for obvious reasons, and the Scientologists will obviously take any decision against them to the Florida Supreme Court. The City can reasonably expect that a number of people will come forward with complaints about practices that have long been recognized as consumer violations by State and Federal courts. Investigations and hearings into these complaints will develop a more than adequate record for legal action.

The following is a description of the types of practices which the Scientologists have engaged in which are well-recognized as consumer violations.

1) Sales methods. Apart from outright fraud, which is discussed below, the Scientologists often use coercive and oppressive sales methods whenever they spot a prospect, which they refer to as "raw meat". Intense and unconscionable sales pressure is common. Covert financial investigations are done on people before they are solicited. Solicitation is occasioned by repeated personal visits to a person's home and place of work, and repeated telephone calls. Whatever physical, mental, or financial benefit a person wants, he is promised he can get it through Scientology. Visits and phone calls often take place at night. People are encouraged to produce cash or checks immediately in order to qualify for generous discounts. An effort is always made to find and play upon the emotional weaknesses of the victim, always

with the singular intent of getting as much money as possible. The names of well-known public figures are put forth as endorsing Scientology or participating in it when in fact this is false. Numerous false statements are always made about the founder of the cult, L. Ron Hubbard, the primary ones being that he has a scientific background, graduated from a university, and that he was a war hero. All of these practices are recognized as consumer violations.

"Bait and switch" is another common deception. The Scientologists convince a person to pay for and take a certain "course" which is promised to have certain benefits. In fact, the course proves to be nothing more than a skillful and aggressive sales pitch for subsequent more expensive courses. Numerous other obvious facts about Scientology are intentionally withheld from the prospective "raw meat". He is not told, at the beginning, that he is being invited on a course that takes many years and thousands of dollars, that he will be threatened, his privacy invaded, his confidential disclosures widely disseminated, that he will be subject to severe disciplinary measures including forced labor, that he will be threatened with suit, that he will be forced to disconnect from family and friends, or that he can be "destroyed" if he ever criticizes or attempts to expose Scientology.

2) Fraud. Some of the overtly fraudulent promises of Scientology have been recognized in court decisions, particularly the case of United States vs. Article or

Device. That case, decided by the Federal District Court for the District of Columbia, and subsequently upheld on appeal, dealt with the central practice of Scientology, E-Meter auditing. The Court decided, after lengthy review of the Scientologists' literature, that it was full of false claims with regard to scientifically guaranteed physical benefits produced by auditing. The Court ordered a warning to be affixed to all E-meters and all Scientology literature to the effect that auditing is not scientifically shown to produce any physical benefit. The Scientologists have never followed that order. To this day, physical cures are commonly promised from auditing. People are told that it will improve their eyesight, intelligence, resistance to disease, coordination, etc. Specific individuals have been told that auditing cures back problems, cancer, muscular dystrophy, intestinal problems, the effects of smoking, drinking, or drug abuse, the effects of swine flu shots, hepatitis, and other conditions. All of these promises are direct fraud, and direct violations of the Federal court order.

Another outright fraud which is always committed is the promise that a full refund will be made to a dissatisfied "student". In fact, refunds are rarely made. A person who requests a refund is given a complex "routing" form which gives him a nearly impossible number of tasks to perform in order to "qualify" for a refund. Part of the process includes a repetitive series of interviews in which he is heavily pressured and sometimes threatened in an attempt to get him to

give up his request. Numerous "charges" are made for processing the refund request. The request itself is, if the person pursues it far enough and persistently enough, referred to a different corporation in a foreign nation. The totality of impediments to the giving of refunds is so great as to make the original promise overtly fraudulent.

Another common fraudulent representation involves the nature of the organization. The Scientologists say that their "Church" is a law-abiding, non-profit organization devoted to the betterment of mankind. These statements are all totally false. Large portions of income are devoted to criminal activities, and to the harassment and attempts to destroy the reputations of private citizens and organizations. The organization makes huge profits, and regularly violates the tax laws of the United States. Their only motive is to make money, and this overrides any desire to benefit mankind. Their principle means of "benefitting" mankind is to attack and destroy anyone who opposes Scientology. These beliefs are plainly set forth in their own books. They are directly contrary to the initial picture which is painted for the unwary "raw meat", and constitute fraud. It is clear that the fraud is material, since most people would not join such an organization initially if they were aware of its criminal and malicious activities.

Another prominent fraud involves the representation that auditing is confidential. Auditing is, in effect, psychotherapy done on a lie detector device. Extremely

intimate information is revealed. The person being audited is not told, before he begins auditing, that this information will be recorded and turned over to other people, including individuals in the Guardians Office. They are not told that it is official policy of the organization to hold this information and later use it for blackmail and extortion purposes against defectors, and that this has been done on many occasions. Nor are they told that in the normal course of auditing a variety of different people are free to look at the records of their auditing statements, or that these statements will be used to encourage them to sever their relationships with family and friends. All of these activities are in direct contravention to the representation that auditing is confidential. For the protection of consumers, the Scientologists could be ordered to disclose that auditing is not confidential.

Another prominent fraud is the claim that Scientology promotes family harmony and marital unity. In fact, Scientology intentionally attempts to destroy these relationships whenever they interfere with the flow of money into their coffers, via a process called "disconnect". Again, the Scientologists could be required to make disclosures about the disconnect process.

3) Debt Collection methods. As noted elsewhere in this report, any person involved for any period of time in Scientology accumulates a "freeloader debt" of thousands of dollars. People are told by "legal officers"

that this is a legal debt for which they could be sued if they left Scientology without permission. This policy is set forth in the "Fair Game Doctrine". The Scientologists have been saying lately that "Fair Game" was cancelled, but this is an utter falsehood. There are documented examples of it as recently as 1979. Many people inside Scientology labor under a very real fear that they will be destroyed if they ever leave or go against Scientology. Such debt collection methods are well-recognized as consumer violations.

4) Unfair Business methods. There are, in the City of Clearwater, a number of businesses which are run by private individuals who are Scientologists. These businesses are part of the W.I.S.E. network (World Institute of Scientology Enterprises). They compete openly with other Clearwater businessmen in a variety of different fields. In other areas of the country, particularly in Boston, W.I.S.E. businesses regularly work closely with the local Scientology organization and employ other Scientologists at below minimum wage. The use of Scientology labor at below minimum wage is a commercial activity is clearly an unfair method of competition against other law-abiding businessmen in the same field (in addition to being a violation of the Federal Fair Labor Standards Act).

5) Minimum Wage Violations in General. Most working staff members of Scientology have been promised wages in return for services. These wages are never paid as promised. Legal redress through a local consumer pro-

tection ordinances should be considered for this overtly fraudulent practice.

The following proposed ordinance is presented in a preliminary form. As presented, it is not suitable for inactment by the City Commission, and requires considerable refinement and addition of numerous technical provisions. The material that follows gives a basic outline of the proposed ordinance.

The State of Florida as well as Pinellas County presently have consumer protection statutes in force. Both of these laws apply to transactions in Clearwater, but neither law precludes a more stringent or specific ordinance by the City. As noted elsewhere in this report, the City of Clearwater has a number of consumer protection issues which are unique to the City even as compared to other cities in Pinellas County.

The proposed ordinance is modeled closely after the Pinellas County Consumer Protection Act. That statute was declared to be Constitutional by the Florida Supreme, and close attention has been paid to drafting said ordinance which will survice a similar constitutional attack.

THE PROPOSED ORDINANCE

- 1) Title - this ordinance shall be designated the "Consumer Protection Ordinance of the City of Clearwater".
- 2) Legislative Intent - the public health, welfare, and interest require a strong and effective consumer pro-

tection program to protect the interests of both the consumer public and legitimate business man. Toward this end, the position of Consumer Affairs Officer is hereby created in the City of Clearwater to enforce all state laws, county ordinances, and municipal ordinances relating to consumer protection.

3) Definitions:

a) "consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of goods, a consumer service, or an intangible to an individual for purposes that are primarily personal, family, or household, or a solicitation by a supplier with respect to any of these dispositions. Said definition shall include, inter alia, transactions and solicitations relating to publicly offered vacation plans, courses of study or instruction, physical and mental self improvement courses, business and personal counselling services, but shall not include services rendered by licensed attorneys, physicians, dentists, or medical care practitioners. Said definition shall also include sales of goods and services by charitable organizations or solicitations for such sales, wherein a representation is made that the thing sold is of substantial value commensurate with the price charged as an inducement or reason for making such sale.

b) "supplier" means a seller, lessor, assignor, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not the

supplier is a natural person, partnership, association, corporation, charitable organization, or non-profit organization.

c) "violation" means a violation of any state law, county ordinance, or municipal ordinance relating to consumer protection, whether civil or criminal in nature, including, but not limited to the Florida Deceptive and Unfair Trade Practices Act, as interpreted in light of the Federal Trade Commission Act and other Federal consumer protection acts, and the interpretations given them by the federal courts.

4) Powers and Duties of the Consumer Affairs Officer

a) To enforce the provisions of all state laws, county ordinances, and municipal ordinances relating to consumer protection, whether civil or criminal, according to the procedures set forth herein.

b) To receive and investigate complaints of alleged violations as defined in this ordinance.

c) To initiate investigations where there is reason to believe, based on evidence presented to him by any person that a violation has occurred or is occurring.

d) To refer complaints to the Office of the State Attorney where there is reason to believe that a criminal violation has occurred or is occurring.

e) To institute actions in the Circuit Court, according to the procedure set forth herein, to

obtain a declaratory judgement that an act or practice constitutes a violation, and to seek injunctive relief against a supplier or other person who has committed, is committing, or is threatening to commit a violation.

f) To effect service of process upon any supplier or other person charged as a respondent in a complaint.

g) To effect service of process upon witnesses.

h) To hold and conduct hearings, as set forth herein.

i) To order a supplier or other person to cease and desist from committing a violation.

j) To implement and administer consumer protection education programs and consumer warning campaigns.

5) Operating Procedures of the Commissioner

a) Any person may make or file a complaint with the Commissioner stating the name and address of a supplier or other person alleged to have committed the violation complained of and the particulars thereof, and such information as may be required by the Commissioner.

b) Upon this filing of a complaint, the Commissioner shall cause such investigation as he deems appropriate to be made. If the Commis-

sioner determines that there are reasonable grounds to believe that a violation has occurred, he may attempt to conciliate the matter through conferences with all interested parties and such representatives as the parties may choose to assist them.

c) If the Commissioner determines that there is no reasonable grounds to believe that a violation has occurred, he shall dismiss the complaint. Any person who has filed a complaint which has ultimately been dismissed by the Commissioner may appeal by way of certiorari to the District Court within 30 days thereafter.

d) Whenever the Commissioner shall have reason to believe, based on evidence presented to him and based on his investigations, that a supplier or other person has committed or is committing a violation and if it shall appear to the Director that a hearing in respect thereof would be in the public interest, he shall issue and have served upon the supplier or other person a complaint and notice of hearing stating the charges and setting a hearing at a time and place certain. The respondent so complained of shall have the right to appear at the place and time so fixed and defend against the allegations contained in the complaint.

e) After a hearing the Commissioner shall make written findings and may make appropriate orders. Said orders shall be enforced by the Commissioner as provided herein.

6) Service of Process - Service of process upon a respondent shall be accomplished at least fourteen (14) days prior to the date of hearing and may be affected by personal service by a duly designated agent of the Commissioner or by certified mail, return receipt requested. Service by certified mail shall be effective three (3) days after depositing the complaint and notice of hearing in the United States Post Office addressed to the owner at his last known address with postage prepaid thereon.

7) Procedures Governing Commissioner's Hearings -

The following procedures shall govern the conduct of hearings before the Commissioner:

a) Burden of Proof - The burden of proof shall be upon the complainant;

b) Order of Proof - The complainant shall present its evidence and testimony first. Thereafter, the respondent shall have the right to present its evidence and testimony. The complainant shall then have the right to present rebuttal evidence and testimony;

c) Admissibility of Evidence and Testimony - Any relevant evidence shall be admitted if the Commissioner finds it competent and reliable, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible in civil actions. The rules of privilege shall be effective

to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. At the hearing the parties may present testimony and evidence, and the right to cross-examine witnesses shall be preserved. All testimony and evidence shall be given under oath or by affirmation. The hearing record shall be public and open to inspection by any person; and upon request by a principal party to the proceeding, the Commissioner shall furnish such party a copy of the hearing record, if any, at such cost as he deems appropriate. Each party shall have the following rights:

- i) To call and examine witnesses;
- ii) To introduce exhibits;
- iii) To cross-examine opposing witnesses on any relevant matter even though that matter was not covered on direct examination;
- iv) To impeach any witness regardless of which party first called him to testify;
- v) To rebut the evidence.

d) Action by the Commissioner. If based upon the testimony and evidence presented in the hearing, the Commissioner determines that a supplier or other person has committed or is committing a violation, it may issue an appropriate Order or take any other action authorized under the provisions of this Act. Any Order or other action taken by the Commissioner shall be reduced to writing and shall specify the findings of fact upon which the order or other action is based.

e) Service of Orders - Any supplier or other person affected by any order or other action by the Commissioner shall be notified either personally or by mail of such Order or other action, and unless waived, a copy of the final Order or action shall be delivered or mailed to such supplier or other person or to his attorney of record.

8) Judicial Review - Any person, firm, corporation, or agency aggrieved by any decision of the Commissioner may appeal to the courts as provided by general law within 20 days from the date of the decision sought to be reviewed; provided, however, that only final orders of the Commissioner may be so reviewed. Interlocutory procedural appeals are hereby specifically prohibited.

9) Enforcement of Orders - If the Commissioner determines that a party has failed to comply with the terms of an order within the time specified, he shall have the authority to initiate an appropriate action in the Circuit Court to compel compliance, including action for declaratory relief and actions seeking injunctive relief.

10) Enforcement of Subpoenas - Upon failure of a person without lawful excuse to obey a subpoena issued by the Commissioner and upon reasonable notice to all persons affected, the Commissioner may apply to the Circuit Court for an order compelling compliance.

11) Penalty for Violation of an Order - Any supplier or other person who violates an order of the Commissioner after it has become final, and while such order is in effect, shall forfeit and pay the City of Clearwater a civil penalty of not more than two thousand (\$2,000.00) dollars for every violation which shall accrue to the City and may be recovered by it in a civil action. Each separate violation of such order shall be a separate offense, except that in the case of a violation through continuing failure or neglect of obeying a final order of the Commissioner, every day of continuance of such failure or neglect shall be deemed a separate offense.

12) Penalties for Hindering or Obstructing Investigations
- Any person who shall hinder or obstruct in any way the Commissioner or an investigator in the performance of his official duties shall be guilty of a misdemeanor of the second degree punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

13) Statute of Limitations - No action may be initiated by the enforcing authority under this act more than two (2) years after the occurrence of a violation.

14) Other Rights and Remedies - Nothing herein shall prevent any person from exercising any right or seeking any private remedy to which he might otherwise be entitled, or from filing any complaint with any other agency.

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