

Appeals court skirts decision on city's sect law

By LESLEY COLLINS
Sun staff writer

CLEARWATER — A federal appeals court ruling doesn't say a word about the constitutionality of a city ordinance regulating charitable solicitations, basically sending it back to a lower court.

The opinion issued Wednesday by the 11th U.S. Circuit Court of Appeals states there hasn't been enough legal record developed by the U.S. District Court in Tampa to warrant a decision on the law's constitutional merits.

"It's an interesting opinion because it doesn't decide anything," Scientology attorney Eric Lieberman said Thursday. "Basically they decided on a bunch of hyper-technical lawyers' issues."

The appeals court in Atlanta ruled on three different sets of appeals tied to the city's charitable solicitation ordinance.

In one appeal, the Church of Scientology failed to get a preliminary injunction against the entire city law.

The appeals court affirmed the decision of U.S. District Court Judge Elizabeth Kovachevich denying a preliminary injunction that would prevent the enforcement of the entire city ordinance.

In July 1984, Miss Kovachevich entered a preliminary injunction placing enforcement handcuffs on parts of the ordinance dealing with registration requirements and the maintaining of financial records.

Her order did not legally bind other sections of the ordinance requiring the

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city attorney to investigate charges of fraud or misrepresentation in fundraising by non-profit or religious groups if accusations are made by 10 or more people. That portion of the law, therefore, can be enforced by the city.

In a second appeal initiated by the city, the court ruled that Miss Kovachevich's decision on the original version of the ordinance should not have been rendered.

An "emergency" ordinance with numerous revisions was passed by city commissioners in March 1984. Two weeks later, Miss Kovachevich ruled the original ordinance was unconstitu-

tional.

In a third appeal, the court declined to rule on the constitutionality of the revised ordinance because the district court opinion was rendered without gathering any factual evidence.

In July 1984, Miss Kovachevich ruled that the city's revised ordinance was "facially" constitutional, based on the language of the ordinance. The Church of Scientology appealed that ruling.

"Their appeal of that order is essentially worthless," Assistant City Attorney Alan Zimmet explained Thursday. "Miss Kovachevich is going to have to proceed with this case. We're going back to her right where we left off."

Because the essential issue of consti-

tutionality isn't addressed in this latest ruling, attorneys on both sides of the case are having to rethink their legal game plans.

"I'm not sure what recommendation I'm going to give to my client," Lieberman said.

At this point, the case could be rerouted through district court to hear necessary factual evidence, such as whether the Church of Scientology would be affected by the law and whether it falls under the protection of First Amendment rights to religious freedom, Zimmet said.

Other possibilities voiced by Lieberman include seeking an "en banc" review by judges at the U.S. appeals court level or appealing to the U.S. Supreme Court.