

2nd Civ. No. B215265

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

RICHARD HOPP,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES,

Defendants and Respondents.

NO. B215265

(Los Angeles County Superior
Court No. BC401887)

(Hon. Malcolm Mackey, Judge)

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION.

Appellant, Richard Hopp appeals from the order entering judgment in favor of respondent, City of Los Angeles¹ following an order granting City's motion for judgment on the pleadings as entered on March 3, 2009 in Department 55 of the Los Angeles County Superior Court, the Honorable Malcolm Mackey, presiding. (AA:129)² Judgment was entered on March 3, 2009, and Notice of Entry of Judgment was served on March 12, 2009. (AA:133) Hopp filed a timely notice of appeal on April 8, 2009. (AA:138)

II. STATEMENT OF THE CASE.

Hopp filed an action for declaratory relief to determine the validity and of City's ordinance, and whether such ordinance was applicable to him under the specific facts detailed in his complaint. (AA:001) Hopp also sought an injunction which if issued would have effectively prohibited City from requiring Hopp to register his collecting hobby as a business. City moved for an order granting judgment on the pleadings which was granted by the court which thereafter entered judgment in favor of City.

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¹ For convenience, appellant shall be referred to as "Hopp" and City of Los Angeles shall be referred to as "City."

² References to the Appellant's Appendix shall be made by use of the letters "AA" followed by the page number, and where applicable a paragraph number. References to the Reporter's Transcript shall be made by use of the letters "RT" followed by the page number.

III. STATEMENT OF FACTS.

Hopp is an avid collector of books, documents, and ephemera as a hobby. (AA:001 at ¶ 3) He does not hold himself out as being in the business or occupation with respect to his collecting or hobby activities. He has not engaged in, conducted, managed, or carried on the "business" (as defined by City's ordinance) of buying, selling, exchanging or otherwise dealt in secondhand books. City's employees who are responsible for enforcing various City ordinances relating to the conduct of various businesses have threatened to arrest Hopp for violation of one or more ordinances if he fails to secure a secondhand book dealer's permit. Accordingly, Hopp filed the instant action seeking a declaration of his rights, duties, and obligations (if any) pursuant to City's current ordinances.

City filed a motion for judgment on the pleadings as to the complaint. The motion was brought pursuant to Code of Civil Procedure section 438 on the ostensible grounds that the complaint fails to state facts that constitute a cause of action against City, inasmuch as City asserted that the challenged ordinance (Los Angeles Municipal Code § 103.310) is valid, constitutional, and **"applies to the activities of Plaintiff Richard Hopp ("Hopp") as alleged in his complaint."** City's motion at p. 2:1-4.

Hopp argued that irrespective of whether the ordinance(s) in question are constitutional, or whether such ordinances have been preempted by state law, the ordinances do not apply to his collecting activities, and thus, the complaint properly states a cause of action for declaratory relief.

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IV. ISSUES ON APPEAL.

- A. Is City's ordinance applicable to Hopp, thereby requiring him to obtain a secondhand book dealer's permit and/or a secondhand dealer's permit even though his purchases of books, documents or ephemera is intended solely for his personal use?
- B. Are City's ordinances relating to secondhand book dealers and secondhand dealers preempted by state law?
- C. Are City's ordinances relating to secondhand book dealers and secondhand dealers unconstitutional?
- D. Did the court error by considering and/or attempting to resolve factual issues which went beyond the pleadings as well as those matters which might have been subject to judicial notice?

V. STANDARD OF REVIEW.

The standard of review applicable to an appeal from an order granting judgment on the pleadings is *de novo*; that is, the court must exercise its independent judgment about whether the complaint states a cause of action as a matter of law. *Smiley v. Citibank* (1995) 11 Cal. 4th 138, 146, *affd.* (1996) 517 U.S. 735, 116 S. Ct. 1730, 135 L. Ed 2d 25. Like a demurrer, a moving defendant is entitled to judgment on the pleadings if the plaintiff's complaint does not state a cause of action. In considering whether a defendant is entitled to judgment on the pleadings, the court generally must look only to the face of the pleading under attack. *Howard Jarvis Taxpayers Assn. v. City of Riverside* (1999) 73 Cal. App. 4th, 679, 685. Also like a demurrer, the court may consider matters which are subject to judicial notice. *Id.* All facts alleged in the complaint are

admitted for purposes of the motion, and the court determines whether those facts constitute a cause of action.³ *Id.* As with a demurrer, a trial court must liberally construe the pleadings with a view to attaining substantial justice among the parties. *Heckendorn v. City of San Marino* (1986) 42 Cal. 3d 481, 486; *Gerawan Farming, Inc. v. Kawamura* (2004) 33 Cal. 4th 1, 32.

VI. ARGUMENT.

A. RULES OF STATUTORY CONSTRUCTION.

As City pointed out in its moving papers (AA:015), in order to understand the ordinance at issue, one must first understand the rules of statutory construction. City and Hopp have little, if any, dispute regarding the applicable rules of statutory construction which apply equally to ordinances. *County of Madera v. Superior Court* (1974) 39 Cal. App. 3d 665. In short, the rules of statutory construction may be summed up by the following:

"Our fundamental task in construing a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. (Citation) We begin by examining the statutory language, giving the words their usual and ordinary meaning. (Citation) If there is no ambiguity, then we

³ In the instant case, it is clear that the court went beyond the allegations of the complaint and those matters that would be subject to judicial notice. See, RT at p. 2:18 - 4:2. It wasn't for the court to determine the facts, but rather to look only at the allegations and those matters that were subject to judicial notice. It certainly did not help that City's counsel deliberately misrepresented the facts during the course of the oral hearing when he argued that "Mr. Hopp provides a service of advertising that he has books for sale." See, RT at p. 2:27-28.

presume the lawmakers meant what they said, and the plain meaning of the language governs. (Citation) If, however, the statutory terms are ambiguous, then we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history. (Citations) In such circumstances, 'we select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.'" *Day v. City of Fontana* (2001) 25 Cal. 4th 268, 272.

"Furthermore, we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." *Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063.

"[A] construction making some words surplusage is to be avoided." *Watkins v. Real Estate Commissioner* (1960) 182 Cal.App.2d 397, 400.

B. A PERSON WHO MERELY COLLECTS BOOKS SOLELY AS A HOBBY IS NOT ENGAGED IN BUSINESS AS A SECONDHAND BOOK DEALER AS DEFINED BY LAMC SECTION 103.310.

In his complaint, Hopp alleged that he is and has been an avid collector of books, documents, and ephemera as a hobby, and that items he

purchases are for his personal use and not for resale. (AA:001 at ¶ 3) He also alleged that he does not hold himself out as a business or occupation with respect to his collecting and hobby activities. (AA:002 at ¶ 3) Hopp further alleged that City's employees who are charged with enforcing its ordinances have asserted that he is required to obtain a secondhand book dealer's permit in order to continue purchasing books as part of his book collecting activities, and have threatened him with arrest if he does not comply.⁴ (AA:001 at ¶¶ 8, 9 and 12)

By way of his complaint, Hopp asserted that since he was not engaged in business, he did not fall under the provisions of the ordinance which purport to regulate secondhand book dealers or secondhand dealers of goods. He further asserted that the ordinance which City argued was applicable to him was preempted by state law, and otherwise unconstitutional.

Shortly after filing its answer, City filed a motion for judgment on the pleadings. In its motion, City argued that Hopp (and presumably any other person who collects used books) is subject to its secondhand book dealer permit requirements. City quoted the portion of Section 103.310, subd. (a)(1) which provides: "SECONDHAND BOOK DEALER' means a person engaging in, conducting, managing or carrying on **the business of**

⁴ Since documents and ephemera are not books, to the extent that Hopp were required to obtain a secondhand book dealer's permit for the sole purpose collecting previously owned books, City would likely demand that he also obtain a secondhand dealer's permit which is applicable to persons who are in the business of dealing in secondhand or rebuilt or reconditioned goods, wares and merchandise. See, LAMC § 103.311(a)(1). (AA:114) See discussion, *infra*.

buying, selling, exchanging or otherwise dealing in secondhand books..."⁵
(Emphasis added.) (AA:114)

City noted that since the word "business" appeared to be the linchpin underlying Hopp's position that he was not subject to regulation by City's ordinance (i.e. he is merely a collector and not engaged in business); that the definition of the word "business" is fundamental to the statutory construction of the ordinance. City then proceeded to refer to a standard dictionary for a definition of the word "business" despite the fact that the word is also defined (albeit in more restrictive terms) in a respected legal dictionary. Despite its reference to a standard dictionary, City also acknowledged that the word "business" is defined within its own statutory scheme to wit: "Business means any **occupation, trade, establishment or concern, regardless of form, which provides services, products or entertainment for which a permit is required under this article, whether or not a permit has been granted, sought, applied for, denied, revoked or suspended.** (Emphasis added.) LAMC § 103.01.

City then proceeded to adopt an untenable position that the term "business" as covered by its ordinance includes any person carrying on the function of buying secondhand books. City's argument failed to conform with the rules of statutory construction for all the reasons set forth herein.

1. **The usual and ordinary language of City's ordinance clearly excludes those who limit their activities to buying or collecting for personal use.**

As mentioned, *supra*, City argued that under its statutory scheme, the

⁵ The definition of a secondhand book dealer also applies to those engaged in the business of buying, selling or otherwise dealing in "secondhand magazines, secondhand text books or secondhand educational materials."

term "business" is defined in the broadest possible terms, and thus, includes any function whether or not the person or entity is engaged in the activity for commercial purposes. The plain language of the statute actually suggests otherwise.

Section 103.310, subd. (a)(1) defines a secondhand book dealer to include any person:

- engaging in the business;
- conducting the business;
- managing the business; or
- carrying on the business;

of buying, selling, exchanging or otherwise dealing in secondhand books.

The definition of "business" as used in City's ordinance means "any occupation, trade, establishment or concern, regardless of form, **which provides services, products or entertainment...**" LAMC § 103.01. (AA:108)

In attempting to broaden the scope of those who are required to obtain a secondhand book dealer's permit, rather than look to the definition of "business" found in its own ordinance, City chose to rely on a standard dictionary (Merriam-Webster's Online Dictionary) definition of business. However, even the online dictionary referred to by City included the following within the definition: "a usually commercial or mercantile activity engaged in as a means of livelihood."

City further argued that the word "concern" as used in its ordinance defining business, refers to any task. Such a reading is inconsistent with Section 103.02 which provides "No person may operate, engage in, conduct, or carry on any business without first obtaining a permit issued by

the Board of Police Commissioners." (AA:112)

Aside from the fact that City chose to ignore the usual and ordinary (and perhaps the most common) usage of the word "business," City also ignored the definition found in Black's Law Dictionary which defines business as "Employment, occupation, profession, or commercial activity engaged in for gain or livelihood" or to put it another way, "Activity or enterprise for gain, benefit, advantage or livelihood."

The definition found in Black's Law Dictionary is consistent with California case law which has addressed the meaning of the word "business." *Union League Club v. Johnson* (1941) 18 Cal. 2nd 275, 278 [the word "business" as used in similar statutes "ordinarily means a business in the trade or commercial sense, one carried on with a view to profit or livelihood"]; *City of Los Angeles v. Cohen* (1954) 124 Cal. App. 2d 225, 228 ["Business is defined as that which occupies the time, attention, or labor of men for the purpose of profit or improvement."].

- 2. Even if the ordinance were ambiguous, the statutory objectives militate against inclusion of those who limit their book buying activities to collecting for personal use.**

As discussed, supra, City argued that the term "business" is defined in the broadest possible sense, so that virtually any activity relating to used books requires a secondhand book dealer permit pursuant to City's ordinance. Like the plain meaning of the word "business," the statutory scheme suggests otherwise.

Section 103.310 which is part of Chapter X of City's municipal code is entitled "Business Regulations." The entire statutory scheme is clearly intended to provide for regulation of various business operations which may (or may not) be perceived as requiring the devotion of an inordinately high

percentage of police resources. There are 51 types of business listed which include among others, dance halls, escort halls, massage parlors, massage businesses (off premises), pawnbrokers, swap meet operators, etc.

That the statutory scheme applies to those engaged in commercial operations is evident by the various sections of City's Municipal Code.⁶ As discussed, supra, by definition "Business means any occupation, trade, establishment or concern, regardless of form, **which provides services, products** or entertainment for which a permit is required under this article, whether or not a permit has been granted, sought, applied for, denied, revoked or suspended. (Emphasis added.) LAMC § 103.01. Moreover, "No person may operate, engage in, conduct, manage or carry on **the business** of secondhand book dealer without first obtaining a permit issued by the Board of Police Commissioners. (Emphasis added.) LAMC § 103.310(b).

The statutory scheme allows for the denial of a permit for a number of reasons, including without limitation, the fact that the business for which the permit is sought has failed to comply with all City business tax and parking occupancy laws. See, LAMC § 103.31 subd. (a)(10). However, there is nothing in the business tax ordinance to suggest that a person who purchases books, documents, or ephemera for his or her own use is subject to City's business tax. See, LAMC § 21.00 et. seq.

It is also notable that the specific section in question refers to a

⁶ It is worth noting that garage sales are not included among the types of activities which require a permit to operate as a "business." In fact, although City requires secondhand dealers of goods to obtain a permit (LAMC § 103.311), City exempts sellers of similar goods where such sales are conducted at a garage sale (which by definition is limited to five such sales, not to exceed ten days per year). See, LAMC § 12.03 (under the definition of "Accessory Use"). (AA:82-84)

secondhand book "dealer." Indeed, Division 9 of City's ordinance which includes Section 103.310 applies generally to "Dealers" and "Sales." Black's Law Dictionary defines "dealer" as follows: "In the popular sense, one who buys to sell, not one who buys to keep, or makes to sell." City has made no effort to offer a definition of the word "dealer," or to reconcile the definition of "business" with any definition of the word "dealer" as used in the ordinance. The rules of statutory construction require that a court give significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose. *Curle v. Superior Court*, supra at p. 1063. A construction making some words surplusage is to be avoided." *Watkins v. Real Estate Commissioner*, supra at p. 400. Thus, the use of the word "dealer" cannot be ignored.

As City concedes, in construing the statute, if there is ambiguity as to the usual and ordinary meaning of the words used, the court must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute. In view of the overall scheme of the ordinance, it is abundantly clear that the permit requirements relate to commercial type activities.

3. Including those who limit their book buying activities to collecting for personal use would be an interpretation that leads to absurd consequences.

As noted, supra, where the court must attempt to construe a statute or ordinance, the court must also try to avoid an interpretation that would lead to absurd consequences. *Day v. City of Fontana*, supra.

If the court were to include those who collect books as a hobby within the definition of secondhand book dealer, it would lead to absurd

consequences. Every person located within the City of Los Angeles who desired to purchase a used book, irrespective of whether the purchase was of a single book or 1,000 books, would be required to obtain a permit under City's construction of the ordinance unless the purchase was exempt (i.e. purchased from another person who held a secondhand book dealer's permit). LAMC § 103.310, subd. (i). Thus, any private party located within the City of Los Angeles who wished to exchange a used paperback book with a friend would be required to obtain a permit. If both parties were located within the City of Los Angeles, both parties would be required to obtain a permit prior to exchanging their respective paperback books.

The absurdity of City's position is further demonstrated when considering the permit of a secondhand dealer.⁷ By City's definition, a "Secondhand Dealer" means a person engaging in, conducting, managing or carrying on the business of buying, selling or otherwise dealing in secondhand or rebuilt or reconditioned goods, wares, and merchandise." LAMC § 103.311(a). (AA:117) Like a secondhand book dealer, a secondhand dealer must obtain a permit prior to engaging in business. LAMC § 103.311(b). (Of course, secondhand books would fall within the definition of "secondhand goods, wares, or merchandise.) Yet, Section 103.311 exempts "Any person engaging in, conducting, managing, selling, exchanging, displaying or offering for sale or exchange, secondhand personal property at a swap meet..." LAMC § 103.311(i). It is notable that Section 103.311(i) does not exempt buyers at a swap meet. Thus, if

⁷ Since Hopp buys secondhand documents and ephemera in addition to secondhand books, City presumably would require him to obtain a secondhand dealer's permit as well.

City's definition of business were applied consistent with the definition City suggests, anyone engaged in the activity of "buying" secondhand (or used) goods, wares and merchandise within the City of Los Angeles would be required to first obtain a secondhand dealer's permit, irrespective of whether such person was buying for his personal use, and irrespective of whether such person purchased such secondhand goods at a rummage sale, swap meet, garage sale, or private advertised sale. Such a scheme is clearly an absurd consequence that results from the untenable definition of "business" suggested by City.

C. CITY'S SECONDHAND BOOK DEALERS ORDINANCE IS PREEMPTED BY STATE LAW.

"A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." California Const. Art. XI, Sec. 7. If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. *O'Connell v. City of Stockton* (2007) 41 Cal. 4th 1061, 1067. A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. *O'Connell v. City of Stockton*, supra; *Sherwin Williams v. City of Los Angeles* (1993) 4 Cal. 4th 893, 897.

A local ordinance "duplicates" state law when it is coextensive with state law (e.g. local ordinance purporting to impose the same criminal prohibition imposed by general law). *O'Connell v. City of Stockton*, supra at p. 1067; *Sherwin Williams v. City of Los Angeles*, supra at p. 897-898.

A local ordinance "contradicts" state law when it is inimical to or

cannot be reconciled with state law (e.g. a local ordinance that sets the maximum speed limit for vehicles below that set by state law). *O'Connell v. City of Stockton*, supra at p. 1068; *Sherwin Williams v. City of Los Angeles*, supra at p. 898.

A local ordinance "enters a field fully occupied" by state law in either of two situations --- when the Legislature "expressly manifests its intent to occupy the legal area or when the Legislature impliedly occupies the field. *O'Connell v. City of Stockton*, supra at p. 1068; *Sherwin Williams v. City of Los Angeles*, supra at p. 898. Where the legislature has manifested an intention, expressly or by implication, wholly to occupy the field, municipal power to regulate in that area is lost. *Id.*

When the Legislature has not expressly stated its intent to occupy an area of law, the court must look to whether it has impliedly done so. *Id.* Preemption by implication occurs in three situations when: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweigh the possible benefit to the locality. *Id.*

In accordance with the foregoing principles, the California Supreme Court has held that a local ordinance providing for the forfeiture of vehicles used to commit certain acts made criminal by state law since the illicit commercial activities (prostitution and trafficking in controlled substances)

are matters of statewide concern that the Legislature has comprehensively addressed through various provisions of this state's Penal and Vehicle Codes, leaving no room for further regulation at the local level. *O'Connell v. City of Stockton*, supra at p. 1076.

1. **City's ordinances purporting to regulate "secondhand book dealers is expressly preempted at least in part by state law.**

The Legislature has enacted a comprehensive statutory scheme regulating those engaged in the dealing of secondhand goods. Business and Professions Code, Chapter 9 commencing with § 21500. Article 4 of Chapter 9 commencing with Section 21625 specifically applies to those whose business is the buying, selling, trading, auctioning, etc. of secondhand tangible personal property. Section 21625 evidences the Legislature's intent to preempt all local regulation by stating:

"Further, it is the intent of the Legislature that this article shall not be superseded or supplemented by the provisions of any ordinance or charter of any city, county, or city and county."

Section 21626, subd. (a) defines a secondhand dealer as "any person, copartnership, firm, or corporation whose business includes buying, selling, trading, taking in pawn, accepting for sale on consignment, accepting for auctioning, or auctioning secondhand tangible personal property. Irrespective of any difference in the definition of secondhand dealer between Section 21626 and LAMC section 103.311(b), except as expressly authorized, the Legislature has clearly evidenced an intent to regulate the buying, selling, etc. of secondhand tangible personal property to the exclusion of local laws. Business and Prof. Code § 21625.

Section 21637 allows for regulation by local authorities to adopt local

ordinances regulating secondhand dealers to the extent such laws are not inconsistent with state law. However, such authority limits any such ordinance to the extent that it purports to alter the identification, holding, or reporting requirements for the acquisition of tangible personal property, other than as specifically allowed by specified state statutes. Bus. and Prof. Code §§ 21637(b), 21638(b). These authorizing statutes are found in Bus. and Prof. Code §§ 21628, 21630, 21633 and 21636, as well as Financial Code § 21208.

Thus, to the extent that City's ordinance purports to alter the identification, holding, or reporting requirements for the acquisition of tangible personal property, except as specifically allowed by state statute, the ordinance is invalid.

City's ordinance relating to the identification of secondhand books is invalid because it alters the identification requirements set forth in the state statutes. City's ordinance provides that "The secondhand book dealer shall immediately upon purchasing or receiving in exchange any such secondhand books or materials stamp, write, print or otherwise permanently affix to each article so purchased or received the number of the bill of sale covering said articles." LAMC § 103.310(g). No such identification requirement is found in the state statutory scheme.

Moreover, the only exemption provided in City's ordinance relates to the receipt of secondhand books from another secondhand book dealer. LAMC § 103.310(i). This provision is invalid in that state law exempts tangible personal property which has been acquired in a nonjudicial bulk sale; acquired in a sale made by any public officer in his official capacity, trustee in bankruptcy, executor, administrator, or receiver; or acquired as

the surplus property of governmental authorities in addition to acquisitions of such property from other secondhand dealers. Because City's ordinance attempts to narrow the scope of exempt transactions, it is invalid.

City's reliance on *Malish v. City of San Diego* (2000) 84 Cal. App. 4th 725 is misplaced. First and foremost, although *Malish* upholds local regulation generally, it invalidated the local ordinance to the extent such ordinance was inconsistent with state law. *Malish v. City of San Diego*, supra at p. 737-738.

2. **City's ordinance relating to secondhand book dealers has been partially covered by general law, and is of such a nature that the adverse effect of the ordinance on the transient citizens of the state outweigh the possible benefit to the locality.**

Assuming for the sake of discussion only the definition of a secondhand book dealer that has been proffered by City is correct; requiring a secondhand book dealers permit for those whose only activity is purchasing books in or around the City of Los Angeles is an adverse effect of a local ordinance on the transient citizens of the state that outweighs the possible benefit to the locality.⁸ Transient citizens whose only activity is purchasing books would need to first obtain a permit from the Police Commission, or otherwise be cognizant of the boundary lines of the City of Los Angeles so that their purchases could be made outside of the City of Los Angeles (e.g. is West Hollywood a distinct city from Hollywood and/or North Hollywood), particularly given the number of local

⁸ Although City's ordinance is presumed to apply only to those who engage in the regulated conduct within City's territorial limits, a strict reading of the ordinances might suggest otherwise. See, LAMC § 103.02, 103.310, 103.311. However, any attempt to regulate business activity conducted outside its borders would surely be prohibited by Article XI, Section 7 of the California Constitution.

communities within the City of Los Angeles that suggest a separate city (e.g. Northridge, Chatsworth, Eagle Rock, etc.).

Such effects are clearly outweighed by any possible benefit to City. There is no revenue that might accrue to City by any such purchase (other than a portion of the sales tax collected by the seller, and/or a gross receipts tax paid by the seller). Requiring a person who is not engaged in business, and whose sole activity is buying to obtain a permit confers no benefit on City other than the permit fees it hopes to collect.

D. CITY'S SECONDHAND BOOK DEALERS LAW IS UNCONSTITUTIONAL.

California's Constitution provides: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." California Const. Art. XI, Sec. 7.

As discussed, supra, City's secondhand book dealers ordinance, particularly as it relates to exemptions from reporting requirements, conflicts with existing state law. Moreover, the purported narrowing of the exemption found within City's ordinance cannot be reconciled with state law (e.g. by judicially expanding the exemption set forth in the ordinance). Since City's secondhand book dealers ordinance conflicts with existing state law (as discussed supra) it is unconstitutional, and thus, void in its entirety.

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VII. CONCLUSION.

For all the reasons set forth herein, Hopp's complaint stated one or more causes of action against City, and thus, City's motion for judgment on the pleadings should have been denied.

Wherefore, plaintiff/appellant Richard Hopp respectfully requests that this court reverse the judgment of dismissal and remand the case to the trial court with instructions to deny the motion for judgment on the pleadings, and enter judgment with the decision of this court.

Respectfully submitted,

Dated: November 5, 2009



DAVID A. CORDIER
Attorney for Appellant, RICHARD
HOPP

CERTIFICATE RE: LENGTH OF BRIEF

Pursuant to California Rules of Court, rule 8.204, I certify that this Appellant's Opening Brief on Appeal contains no more than 4,900 words.

Dated: November 5, 2009


DAVID A. CORDIER
Attorney for Appellant, RICHARD
HOPP

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 466 Foothill Blvd., No. 300, La Cañada, California 91011.

On November 5, 2009 I served the document entitled: **APPELLANT'S OPENING BRIEF** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

BY U.S. MAIL TO:

SUPREME COURT OF CALIFORNIA
RONALD REAGAN BUILDING
300 S. SPRING ST. 2ND FLOOR
LOS ANGELES, CA 90013
[4 COPIES]

BY EXPRESS DELIVERY TO:

LOS ANGELES CITY ATTORNEY
GABRIEL S. DERMER (DEPUTY CITY ATTORNEY)
200 N. MAIN ST., ROOM 916
LOS ANGELES, CA 90012

HON. MALCOM MACKAY
LOS ANGELES COUNTY SUPERIOR COURT
DEPARTMENT 55
111 N. HILL ST.
LOS ANGELES, CA 90012

(BY MAIL)

I deposited such envelope in the mail at Glendale, California.

(BY EXPRESS MAIL) I deposited such envelope in the mail at Glendale, California.

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(BY PERSONAL SERVICE) I delivered the above-referenced document to the office of the addressee.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 5, 2009 at Glendale, California.


DAVID A. CORDIER