



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1998

The Honorable Cindy Maria Garner
District Attorney
349th Judicial District of Texas
P.O. Box 1076
Crockett, Texas 75835

Letter Opinion No. 98-111

Re: Constitutionality of municipal juvenile
curfew ordinance (RQ-1173)

Dear Ms. Garner:

You have asked this office to consider the constitutionality of a juvenile curfew ordinance adopted by the City of Crockett, Texas¹. Because this office does not find facts in the opinion process, we can consider only the facial constitutionality of the ordinance in question. In our view, that issue is resolved by the decision of the United States Court of Appeals for the Fifth Circuit in *Qutb v. Strauss*, 11 F.3d 488 (5th Cir. 1993), *cert. denied*, 511 U.S. 1127 (1994), which held a substantially similar ordinance constitutional. Based on the reasoning of *Qutb*, we find the Crockett ordinance to be constitutional on its face.

In *Qutb*, the Fifth Circuit considered a Dallas city ordinance which made it a misdemeanor for persons under the age of seventeen to remain in public places or establishments from 11 p.m. to 6 a.m. on week nights, and from midnight to 6 a.m. on weekends. The statute included certain exceptions or defenses, however. It was no violation of the ordinance for a minor to remain in a public place or establishment during the curfew hours if accompanied by a parent or guardian, or if on an errand for a parent or guardian, or if traveling in a motor vehicle to or from work or work-related activities, or if attending school, religious, or civic functions or generally exercising First Amendment rights, or if engaging in interstate travel. Further, a minor could during curfew hours remain on the sidewalk in front of his or her home or the home of a neighbor.

The *Qutb* court's first consideration was the level of scrutiny to be given the ordinance. As the court explained the matter:

Under the Equal Protection analysis, we apply different standards of review depending upon the right or classification involved. If a classification

¹You advise us that the ordinance is in compliance with the requirements of Family Code section 52.028 (relating to the taking into custody of juveniles violating the ordinance) and Local Government Code section 370.002 (relating to the review of such an ordinance). We therefore do not consider any issues raised by those statutes in this opinion.

disadvantages a “suspect class” or impinges upon a “fundamental right,” the ordinance is subject to strict scrutiny. Under the strict scrutiny standard, we accord the classification no presumption of constitutionality. Instead, we ask whether the classification promotes a compelling governmental interest and, if so, whether the ordinance is narrowly tailored such that there are no less restrictive means available to effectuate the desired end.

Id. at 492.

As the court pointed out, the ordinance in question did not burden a suspect class, since age (unlike, *e.g.*, race) is not a suspect category. *Id.* However, the court assumed without deciding that the right to move about freely, which the plaintiffs contended was unduly burdened by the ordinance, was a fundamental right. *Id.*

Proceeding with the strict scrutiny analysis, the *Qutb* court found that the ordinance addressed a compelling state interest in protecting minors from harm and preventing juvenile crime. *Id.* at 493. Further, the court found that in light of the numerous defenses the ordinance contained, it was sufficiently narrowly tailored:

With the ordinance before us today, the [C]ity of Dallas has created a nocturnal juvenile curfew that satisfies strict scrutiny. By including the defenses to a violation of the ordinance, the city has enacted a narrowly drawn ordinance that allows the city to meet its stated goals while respecting the rights of the affected minors.

Id. at 494.

There is no question, after *Qutb*, that in the view of the Fifth Circuit it is possible for a juvenile curfew ordinance to pass constitutional muster. The only remaining question is whether the Crockett ordinance is sufficiently similar to the Dallas ordinance so that *Qutb* would govern here as well.

This office does not interpret city ordinances in the opinion process. However, without parsing the provisions of the curfew ordinance, we find that the two ordinances are substantially similar, and that the Crockett ordinance appears to have been modeled on the Dallas one. Indeed, the only substantial difference evident upon cursory inspection is that the definition section of the Crockett ordinance restricts the adults who may have care or custody of minor children for the purpose of one statutory defense to persons twenty years of age or older, while the corresponding section of the Dallas ordinance permits such persons to be eighteen or older. We do not believe, however, that a court would judge this distinction to make a constitutional difference, especially in light of the fact that in every other respect the Crockett ordinance contains the elements critical to the *Qutb* court’s least restrictive means analysis.

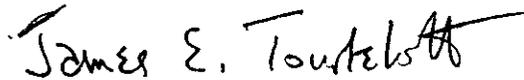
We note that one other court of appeals, in declaring a juvenile curfew ordinance unconstitutional, has declined to follow *Qutb. Hutchins by Owens v. District of Columbia*, 144 F.3d 798 (D.C. Cir. 1998). However, the City of Crockett, Texas, like the City of Dallas, Texas is within the jurisdiction of the United States Court of Appeals for the Fifth Circuit, and accordingly a court considering the Crockett ordinance would be bound to accord *Qutb* its full precedential weight. In the light of *Qutb*, then, it is the view of this office that the juvenile curfew ordinance adopted by the City of Crockett, Texas is facially constitutional.

We caution, however, that a facially constitutional ordinance may in certain circumstances be unconstitutionally applied. If, for example, such an ordinance were enforced in a manner that had an invidious impact on members of a suspect class, the case might well be altered. Care must therefore be taken that the ordinance, like all others, be even-handedly applied. Nevertheless, unless the Fifth Circuit should choose to revisit the issue, the ordinance itself will not be held to violate the United States Constitution.

S U M M A R Y

The juvenile curfew ordinance adopted by the City of Crockett, Texas is facially constitutional.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee