

ANSWER TO QUESTION NO. 13

Jack's best argument is to challenge the constitutionality of the ordinance as a violation of the free speech guarantee of the First Amendment to the United States Constitution. Applicable to state and local governments through the Fourteenth Amendment, the First Amendment provides that government shall make no law abridging the freedom of speech. Here, the City of South Pointe has implemented an ordinance that bars the placement of "For Sale" signs on residential property. Such signs are a form of commercial speech. *Linmark Assoc, Inc v Township of Willingboro*, 431 US 85 (1977).

Commercial speech is not entitled to the same scope of protection as political speech or expressive speech. *Rochester Hills v Schultz*, 459 Mich 486, 489 (1999). Nonetheless, commercial speech is constitutionally protected from unwarranted governmental regulation. *Id.* A determination whether commercial speech has been unconstitutionally regulated turns on consideration of four factors. A reviewing court must consider whether: (1) the speech concerns lawful activity and is not misleading; (2) the government's restriction is justified by a substantial governmental interest; (3) the regulation directly advances the asserted governmental interest; and (4) the regulation is more extensive than necessary to serve the governmental interest. *Id.* citing *Central Hudson Gas & Electric Corp v Public Service Comm of New York*, 447 US 557, 561 (1980).

Here, the speech subject to restriction concerns the sale of real property, a lawful activity. No reasonable argument may be advanced that "For Sale" signs are misleading. This factor weighs in favor of striking down the ordinance.

The government interests that caused the City Council to enact the ordinance were substantial. A local government has a substantial interest in the value of property within the community. This is particularly true in Michigan, where the ability of a local government to fund basic services is directly tied to the value of the property within the community. Const 1963, art 9, §3. Additionally, a local government has a substantial interest in encouraging people to maintain residence within the community. *Linmark Assoc, supra* at 96. Thus, the second factor weighs in favor of upholding the ordinance.

However, the ban on "For Sale" signs does not directly advance

these vital government interests. The mere fact that homes display "For Sale" signs, will not cause the value of other homes within a community to decrease. The precipitous fall in real estate values is the product of a bad economy and an excess in the supply of homes offered for sale, regardless of whether the offer to sell is advertised by the placement of a sign in front of the home. Thus, the third factor weighs in favor of striking down the ordinance.

Finally, to the extent it may be argued that the ordinance serves one or more of the above described governmental interests, the regulation of speech contained in the ordinance is far more extensive than necessary. The regulation bans the dissemination of truthful information that promotes and facilitates the exchange of residential property. The exchange of residential property relates to one of the most important decisions a person can make: where to live and raise a family.

*Id.* Additionally, the ordinance is premised on the notion that residents of South Pointe who are provided this information will act contrary to their best interests and the best interests of the City by selling their property and moving out of South Pointe.

However, the protection afforded speech by the First Amendment to the United States Constitution is based on the notion that "people will perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication rather than to close them". *Id.* at 97, quoting *Virginia Pharmacy Bd v Virginia Citizens Consumer Council*, 425 US 748, 770 (1976).

Considering the four factors described above, it is likely that a reviewing court would strike down the ordinance because it is an unwarranted restriction on truthful and legitimate commercial speech, contrary to the First Amendment to the United States Constitution.