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Municipal Corporations, Counties, and Other Political Subdivisions
Kenneth W. Biedzynski, J.D., Richard B. Gallagher, J.D., Stephanie Giggetts,
J.D., Gary A. Hughes, J.D., Mindy Pittell Hurwitz, J.D., Theresa L. Leming,
J.D., William Lindsley, J.D., Eric C. Surette, J.D., Tim A. Thomas, J.D., and
Jane E. Lehman, J.D. and Anne E. Melley, J.D., of the National Legal Research
Group, Inc.

IX. Ordinances, Resolutions, and Other Municipal or Local Legislation
C. Validity
3. Challenge

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§ 332. WHO MAY QUESTION, GENERALLY

A party has standing to challenge the validity of an ordinance only if standing is conferred by a statute, another applicable ordinance, or if the party can demonstrate that he is directly and adversely affected by an ordinance. [\[FN1\]](#) There must be a showing of direct interest resulting from the ordinance. [\[FN2\]](#)

For instance, parties had standing to challenge municipal ordinances where--

- a physician plaintiff, who was subject to potential criminal liability for failure to comply with the requirements of a municipal ordinance regarding the notification of and consent by parents before an abortion may be performed on an unmarried minor, sought to raise the claims of his minor patients. [\[FN3\]](#)
- a towing service operator challenged the validity of subsections of a city ordinance which required property owners to place certain signs in their parking lots before they could lawfully have a vehicle towed, and which made the property owner guilty of a misdemeanor if it had a vehicle towed without complying with the signage requirements or if the vehicle were legally parked. Even though those subsections applied directly to the property owners, rather than the towing services, the operator was the potential party economically affected by the ordinance, and therefore had the most motivation to challenge the ordinance. [\[FN4\]](#)
- a plaintiff sued for declaratory and injunctive relief against an ordinance regulating the owners of coin--operated amusement centers brought a vagueness challenge against the language of the ordinance concerning an applicant's "connections with criminal elements," since the ordinance forced the plaintiff to attempt to conform its conduct to a vague standard in its license renewal applications for at least ten years or to suffer substantial pecuniary loss under the lease and its investment in its leasehold. [\[FN5\]](#)
- minors challenged a city curfew ordinance on the ground of overbreadth. [\[FN6\]](#)
- officers and sole stockholders of a corporation which offered live entertainment in the form of nude dancing challenged nude dancing ordinances on the ground of overbreadth where the owners were personally subject to arrest and imprisonment or to the imposition of fines under the ordinances if the activity continued at their establishment, and in view of past arrests and prosecution of the owners or their employees under similar statutes and ordinances. [\[FN7\]](#)
- a political organization challenged an ordinance prohibiting the solicitation of occupants of vehicles stopped at intersections, where the organization had engaged in such solicitation in the past and desired to resume such activities. [\[FN8\]](#)
- an organization which sought to conduct a protest on city property challenged a city's ordinances regulating public property. The organization was denied permission to post banners in a park, the organization showed an unmistakable intention to engage in activities prohibited by the challenged ordinances, and the city demonstrated its resolve to enforce the ordinances against the organization. [\[FN9\]](#)

On the other hand, parties did not have standing to challenge municipal ordinances where--

- an owner who was in clear violation of a city ordinance prohibiting a residential property owner from keeping an

abandoned motor vehicle on the property sought to challenge the ordinance for possible vagueness as applied to other fact situations. [\[FN10\]](#)

-- petitioners involved with sexual oriented businesses challenged a municipal ordinance prohibiting the issuance of a license to conduct such businesses to an applicant who has resided with an individual whose license application has been denied or revoked within the preceding 12 months, since the record did not reveal any petitioner who was living with an individual whose license was denied or revoked during the applicable period. [\[FN11\]](#)

-- a minor challenged a curfew ordinance, complaining of vagueness in sections addressed to the conduct of adults and business establishments in allowing the violation of the ordinance by minors. [\[FN12\]](#)

-- a physician plaintiff seeking to represent pregnant women who desired abortions after viability but who were not before the court in an action challenging a city ordinance forbidding abortions after viability except to prevent the death or impairment of the health of the pregnant women. [\[FN13\]](#)

-- a church challenged an unenforced ordinance requiring a special use permit that it had repeatedly violated without municipal retaliation, that allegedly increased the cost of a lease but was not fairly traceable to the church's difficulty acquiring rental property for its ministry and congregation, and that applied to art galleries, **libraries**, and museums. [\[FN14\]](#)

-- the party challenged an ordinance only on the basis that it was a citizen and a taxpayer. [\[FN15\]](#)

Observation: It has been held that under a remedial statute such as a municipal civil rights ordinance, a person attacking policy rather than a specific incident should be recognized as having standing wherever possible. [\[FN16\]](#)

Practice Guide: The requirement that evidence of standing to sue be contained in the record was not satisfied when the attorney for a city in a suit challenging an ordinance denying persons convicted of crime a license to operate sexually oriented businesses stated in oral argument that there were one or two petitioners that had their license denied based on a criminal conviction. [\[FN17\]](#)

[\[FN1\]. Metropolitan Exp. Services, Inc. v. City of Kansas City, Mo., 23 F.3d 1367 \(8th Cir. 1994\)](#), reh'g denied, (June 3, 1994) and appeal after remand, [71 F.3d 273 \(8th Cir. 1995\)](#), reh'g denied, [\(Jan. 23, 1996\)](#) and [\(distinguished by, Lamminen v. City of Cloquet, 987 F. Supp. 723 \(D. Minn. 1997\)\)](#) and [\(distinguished by, State ex rel. Mid-Missouri Limestone, Inc. v. County of Callaway, 962 S.W.2d 438 \(Mo. Ct. App. W.D. 1998\)\)](#).

[\[FN2\]. City of Ashland v. Ashland F.O.P. No. 3, Inc., 888 S.W.2d 667 \(Ky. 1994\)](#).

While private parties have standing to seek injunctive and mandamus relief, only the attorney general, district attorneys, and county attorneys have standing to void governmental acts based upon violations of an Open Meetings Act. [City of Topeka v. Watertower Place Development Group, 265 Kan. 148, 959 P.2d 894 \(1998\)](#).

[\[FN3\]. City of Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416, 103 S. Ct. 2481, 76 L. Ed. 2d 687 \(1983\)](#), on remand to, [604 F. Supp. 1268 \(N.D. Ohio 1984\)](#) and on remand to, [604 F. Supp. 1275 \(N.D. Ohio 1985\)](#).

[\[FN4\]. Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 530 S.E.2d 369 \(2000\)](#).

[\[FN5\]. Aladdin's Castle, Inc. v. City of Mesquite, 630 F.2d 1029 \(5th Cir. 1980\)](#), reh'g denied, [634 F.2d 1355 \(5th Cir. 1980\)](#) and probable jurisdiction noted, [451 U.S. 981, 101 S. Ct. 2312, 68 L. Ed. 2d 838 \(1981\)](#) and judgment rev'd in part, on other grounds [455 U.S. 283, 102 S. Ct. 1070, 71 L. Ed. 2d 152 \(1982\)](#), on remand to, [713 F.2d 137 \(5th Cir. 1983\)](#), reh'g denied, [718 F.2d 1097 \(5th Cir. 1983\)](#) and motion to recall mandate denied, [464 U.S. 927, 104 S. Ct. 329, 78 L. Ed. 2d 300 \(1983\)](#).

[FN6]. [City of Maquoketa v. Russell](#), 484 N.W.2d 179 (Iowa 1992) (declined to follow by, [Matter of Appeal In Maricopa County, Juvenile Action No. JT9065297](#), 181 Ariz. 69, 887 P.2d 599 (Ct. App. Div. 1 1994)).

Validity, construction, and effect of juvenile curfew regulations, [83 A.L.R. 4th 1056](#).

[FN7]. [Leverett v. City of Pinellas Park](#), 775 F.2d 1536 (11th Cir. 1985) (distinguished by, [Jorgenson v. Volusia County](#), 625 F. Supp. 1543 (M.D. Fla. 1986)) and (declined to extend by, [White's Place, Inc. v. Glover](#), 975 F. Supp. 1333 (M.D. Fla. 1997)).

[FN8]. [Acorn v. City of Phoenix](#), 798 F.2d 1260 (9th Cir. 1986).

[FN9]. [ACORN v. City of Tulsa, Okl.](#), 835 F.2d 735 (10th Cir. 1987) (distinguished by, [Amwest Investments, Ltd. v. City of Aurora, Colo.](#), 701 F. Supp. 1508 (D. Colo. 1988)) and (distinguished by, [Eagon Through Eagon v. City of Elk City, Okl.](#), 72 F.3d 1480 (10th Cir. 1996)).

[FN10]. [City of Clarksville v. Moore](#), 688 S.W.2d 428 (Tenn. 1985).

[FN11]. [FW/PBS, Inc. v. City of Dallas](#), 493 U.S. 215, 110 S. Ct. 596, 107 L. Ed. 2d 603 (1990), on remand to, [896 F.2d 864 \(5th Cir. 1990\)](#) and (distinguished by, [Sequoia Books, Inc. v. Ingemunson](#), 901 F.2d 630 (7th Cir. 1990)) and (distinguished by, [Mom N Pops, Inc. v. City of Charlotte](#), 979 F. Supp. 372 (W.D.N.C. 1997)) and (distinguished by, [Outdoor Media Dimensions Inc. v. State](#), 150 Or. App. 106, 945 P.2d 614 (1997)) and (distinguished by, [Ohio Citizen Action v. City of Avon Lake](#), 986 F. Supp. 454 (N.D. Ohio 1997)) and (distinguished by, [MacDonald v. Safir](#), 26 F. Supp. 2d 664, 80 A.L.R.5th 709 (S.D.N.Y. 1998)) and (distinguished by, [City News & Novelty, Inc. v. City of Waukesha](#), 231 Wis. 2d 93, 604 N.W.2d 870 (Ct. App. 1999)) and (distinguished by, [T Backs Club, Inc. v. Seaton](#), 84 F. Supp. 2d 1317 (M.D. Ala. 2000)).

[FN12]. [City of Panora v. Simmons](#), 445 N.W.2d 363, 83 A.L.R.4th 1035 (Iowa 1989) (called into doubt on other grounds by, [K.L.J. v. State](#), 581 So. 2d 920 (Fla. Dist. Ct. App. 1st Dist. 1991)) and (declined to follow on other grounds by, [Hutchins v. District of Columbia](#), 942 F. Supp. 665 (D.D.C. 1996)).

[FN13]. [Akron Center for Reproductive Health, Inc. v. City of Akron](#), 651 F.2d 1198 (6th Cir. 1981), cert. granted, 456 U.S. 988, 102 S. Ct. 2266, 73 L. Ed. 2d 1282 (1982) and cert. denied, 456 U.S. 989, 102 S. Ct. 2268, 73 L. Ed. 2d 1283 (1982) and judgment aff'd in part, rev'd in part on other grounds, 462 U.S. 416, 103 S. Ct. 2481, 76 L. Ed. 2d 687 (1983), on remand to, [604 F. Supp. 1268 \(N.D. Ohio 1984\)](#) and on remand to, [604 F. Supp. 1275 \(N.D. Ohio 1985\)](#).

[FN14]. [Love Church v. City of Evanston](#), 896 F.2d 1082 (7th Cir. 1990), reh'g denied, (June 13, 1990) and cert. denied, 498 U.S. 898, 111 S. Ct. 252, 112 L. Ed. 2d 210 (1990).

[FN15]. [Newsome v. City of Union Point](#), 249 Ga. 434, 291 S.E.2d 712 (1982); [City of Ashland v. Ashland F.O.P. No. 3, Inc.](#), 888 S.W.2d 667 (Ky. 1994).

[FN16]. [Big Bros., Inc. v. Minneapolis Commission on Civil Rights](#), 284 N.W.2d 823, 20 Empl. Prac. Dec. (CCH) ¶ 30139 (Minn. 1979).

[FN17]. [FW/PBS, Inc. v. City of Dallas](#), 493 U.S. 215, 110 S. Ct. 596, 107 L. Ed. 2d 603 (1990), on remand to, [896](#)

[F.2d 864 \(5th Cir. 1990\)](#) and (distinguished by, [Sequoia Books, Inc. v. Ingemunson, 901 F.2d 630 \(7th Cir. 1990\)](#)) and (distinguished by, [Mom N Pops, Inc. v. City of Charlotte, 979 F. Supp. 372 \(W.D.N.C. 1997\)](#)) and (distinguished by, [Outdoor Media Dimensions Inc. v. State, 150 Or. App. 106, 945 P.2d 614 \(1997\)](#)) and (distinguished by, [Ohio Citizen Action v. City of Avon Lake, 986 F. Supp. 454 \(N.D. Ohio 1997\)](#)) and (distinguished by, [MacDonald v. Safir, 26 F. Supp. 2d 664, 80 A.L.R.5th 709 \(S.D.N.Y. 1998\)](#)) and (distinguished by, [City News & Novelty, Inc. v. City of Waukesha, 231 Wis. 2d 93, 604 N.W.2d 870 \(Ct. App. 1999\)](#)) and (distinguished by, [T Backs Club, Inc. v. Seaton, 84 F. Supp. 2d 1317 \(M.D. Ala. 2000\)](#)).

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