



LIZ MURRILL
ATTORNEY GENERAL

STATE OF LOUISIANA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE, LA
70804-9005

June 6, 2024
OPINION 24-0073

Honorable Brad Edwardes
Mayor of the Town of Greenwood
9381 Greenwood Road
Greenwood, LA 71033

22-2 DRUGS – Narcotics, etc.

La. R.S. 40:1021

Town of Greenwood cannot impose regulations on displays of items that may be considered drug paraphernalia when drugs have not been introduced into those items. In addition, there may be First Amendment issues with the Town's proposed regulatory scheme.

Dear Mr. Edwardes,

Your request for an Attorney General's Opinion on behalf of the Town of Greenwood has been assigned to me for research and reply. In your request, you seek this office's opinion with regard to the town's right to regulate the display of items that could be considered drug paraphernalia within the town limits of Greenwood.

After discussion with you and other members of your office, it appears that the issue is that there is at least one convenience store in your town that sells items that could be considered drug paraphernalia pursuant to La. R.S. 40:1021. This convenience store sells various items with marijuana leaves on the packaging, including bonges, grinders, and rolling papers, among other things. However, the Chief of Police in the Town of Greenwood has advised you that the items are technically not drug paraphernalia until drugs have been introduced into them. Nevertheless, the town is concerned about young children seeing these displays and would like to be able to impose regulations to require these displays to be kept behind a counter or a barrier, even though the items may have legal uses.

This office contacted the Louisiana Office of Alcohol and Tobacco Control (ATC), which has advised that, because these items are innocuous on their own, and they are only a concern when technically introduced with drugs, the ATC cannot regulate those items or how or where they should be displayed. Furthermore, the ATC informed us that it has not promulgated any rules or regulations on the specific issue you have raised about regulation of display of items that could be considered drug paraphernalia. Moreover, this office has found no statutory or other authority that would allow the Town of Greenwood to establish its own regulations regarding the display of these items.¹

¹ Your request acknowledges that certain laws prohibit transactions involving drug paraphernalia and the criminal penalties associated therewith. See, e.g., La. R.S. 40:1021, *et seq.* However, your request

As a final matter, this office notes that there are potential First Amendment issues with your attempts to regulate the display of these items in the content-based manner you have described above. A regulation of speech is facially content-based under the First Amendment if it “target[s] speech based on its communicative content”—that is, if it “applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). The commonsense meaning of the phrase “content based” requires a court to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. *Id.* citing, *Sorrell v. IMS Health, Inc.*, 564 U.S. 552 (2011). The First Amendment requires heightened scrutiny whenever the government creates regulation of speech because of disagreement with the message it conveys. See *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

While we call your attention to the potential First Amendment issues, we express no opinion on the constitutionality of your planned regulatory scheme in that regard.

We trust that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

LIZ MURRILL
ATTORNEY GENERAL

BY: 
CHIMÈNE ST. AMANT
ASSISTANT ATTORNEY GENERAL

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expressly is limited to the question of regulation of display of items that could potentially be—upon additional factual findings not present here—drug paraphernalia, and this opinion responds to that limited question.