

ARRESTED FOR PLAYING MUSIC?

What can happen when musicians are deemed “panhandlers”

SEVERAL WEEKS AGO I met with a young musician who was seeking legal assistance. The musician, who I’ll call Paul, was an aspiring alternative rock violinist interested in obtaining sample contracts for music recording, production and performance that he could utilize for future engagements. I agreed to help him with this relatively simple task since he was a new Local 802 member and it seemed like a great idea to demonstrate to him the many benefits of union membership, including occasional free legal services. With any luck he would spread the word. This encounter was quite ordinary, and I thought nothing of it. But afterward, something compelled me to do a Google search on my young client. I discovered that Paul had an intriguing deep, dark secret.

Paul had been arrested in Atlanta last year and charged with a misdemeanor. He spent five days in an Atlanta jail. What was his crime? When I found out, I almost fell out of my chair.

Paul had been arrested for playing his violin and selling his CDs in a subway station. And he wasn’t the only Atlanta musician subject to arrest. On May 31, 2013, trombonist Eryk McDaniel was arrested for playing trombone outside Turner Field. While he was not directly requesting money, the fact that his trombone case was open in front him was enough to charge him. Both musicians allegedly had violated Atlanta’s “anti-panhandling law,” which prohibits people from selling or panhandling in public.



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Atlanta is not the only locality where public music performance for donations is illegal. It is almost unfathomable, but many municipalities have anti-panhandling ordinances that may apply to musicians. For instance, the city of Evanston, Illinois has an anti-panhandling ordinance that defines panhandling as “any solicitation made in person upon any street, public place or park in the city, in which a person requests an immediate donation of money or other gratuity from another person, and includes, but is not limited to, seeking donations by vocal appeal



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or for music, singing, or other street performance.” First Amendment lawyers have had great success obtaining judicial declarations that such laws are unconstitutional as they impinge on our constitutionally protected right to freedom of expression. Civil rights lawyers working for the First Amendment Center have invalidated panhandling bans in California, Michigan, Utah, Arizona and New Mexico, among other jurisdictions. In fact, in 2010, New York’s “anti-begging law” (Penal Law Section 240.35[1]) was struck down as unconstitutional in *People v. Hoffstead*, 28 Misc. 3d 16 (App.Term., 2010). There, an appellate court found that the state’s interest in maintaining public order and reducing the fear of coercive encounters with panhandlers could be served by measures less destructive of people’s First Amendment rights. The law, as written, was deemed unenforceable.

Nevertheless, even in New York City, performing street musicians still have to be concerned, as Shane Gasteyer pointed out in an article in these pages last year.

Shane highlighted a New York city ordinance that seems to restrict a musician’s right to play for money in certain areas of the city’s public parks. (See www.bitly.com/no-music-zones.) Actual application of that ordinance remains to be seen, and I suspect that it too may suffer from constitutional infirmities.

As a result of the recent spate of arrests of Atlanta musicians, Atlanta City Council public safety committee chairman Michael Julian Bond decided to craft an amendment to the panhandling ordinance that would exclude musicians from its reach so long as they were not “aggressive.” Mr. Bond, in fashioning the amendment to the law, admitted that the ordinance was never meant to prohibit music performance. In an Atlanta newspaper article, he remarked that “I think everybody enjoys the music most of the time and we don’t want to hurt the fiddlers on the corner.” Indeed, making a living as a professional musician these days is hard enough as it is. Being arrested for it is pure and simple insanity.