

MONONGALIA COUNTY COMMISSION

COURT HOUSE

MORGANTOWN, WEST VIRGINIA 26505

James A. Ashburn, Commissioner
Elizabeth M. Martin, Commissioner
Eugene J. Sellaro, Commissioner

Telephone: 304 291-7257



ORDINANCE

AN ORDINANCE OF THE COUNTY COMMISSION OF MONONGALIA COUNTY, WEST VIRGINIA, RESTRICTING CERTAIN ACTIVITIES IN RELATION TO OBSCENE MATTER; DEFINING TERMS; PROVIDING FOR INJUNCTIVE RELIEF; ESTABLISHING PENALTIES FOR VIOLATIONS AND EXEMPTING CERTAIN EMPLOYEES FROM PROSECUTION; ALL UNDER THE AUTHORITY OF CHAPTER 7, ARTICLE 1, SECTION 4 OF THE WEST VIRGINIA CODE, AS AMENDED.

It appearing to the County Commission of Monongalia County, West Virginia that said Commission should restrict certain activities in relation to obscene matter, define terms, provide for injunctive relief, establish penalties for violations and exempt certain employees pursuant to the power granted the Commission by Chapter 7, Article 1, Section 4 of the West Virginia Code, as amended, the Commission hereby adopts the following ordinance and it shall read as follows:

Section 1. Definitions.

For purposes of this ordinance:

(1) "Knowingly" means to have knowledge of or to be aware of the content or character of obscene matter.

(2) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical,

chemical or electrical reproduction, or any other articles, equipment, machines or materials.

(3) "Individual" means any human being regardless of age.

(4) "Obscene" means matter which the average individual applying contemporary community standards would find (i) taken as a whole, appeals to the prurient interest; (ii) depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and (iii) the matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:

(A) Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or

(B) Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.

(5) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(6) "Prepare" means to produce, publish or print.

(7) "Public display" means the placing of material on or in a billboard, viewing screen, theatre, marquee, newsstand, display rack, window, showcase, display case or similar public place so that material can be purchased or viewed by individuals.

Section 1a. Injunctive relief.

The Circuit Court shall have jurisdiction to issue an injunction to enforce the purposes of this ordinance upon petition by the prosecuting attorney or any citizen of the

county who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.

Section 2. Activities prohibited; penalties.

Any person who knowingly sends or causes to be sent or causes to be brought into the county of Monongalia for sale or public display, or prepares, sells or makes a public display, or in the county of Monongalia offers to prepare, sell or make a public display, or has in his possession with the intent to sell or make a public display of any obscene matter to any individual, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned in the county jail not more than thirty days or both fined and imprisoned. A person convicted of a second or subsequent offense under this ordinance is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail not more than six months or both fined and imprisoned.

Section 3. Prosecution by presentment or indictment.

No person may be prosecuted for an offense under this ordinance except by indictment or information.

Section 4. Employees acting within scope of employment shall not be prosecuted.

No employee shall be guilty of a violation of this ordinance when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of obscene matter while acting within the scope of his

regular employment, unless such employee has a proprietary interest in such obscene matter or is a shareholder or officer of a corporation which has a proprietary interest in such obscene matter.

Section 5. Exceptions.

Nothing in this ordinance shall be construed so as to apply to any person exercising a right secured by the constitution or laws of this State or of these United States.

Section 6. Title.

This ordinance shall be known as and may be cited as the "Obscenity Ordinance of Monongalia County".

Section 7. Severability.

The provisions of this ordinance are severable, and if any provision or part thereof shall be declared invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of this ordinance.

Section 8. Effective Date.

This ordinance shall become effective on and after passage and upon adoption by the Monongalia County Commission.

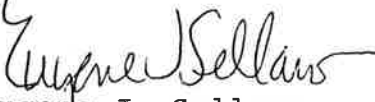
PASSED by the County Commission of Monongalia County, West Virginia on FIRST READING on this the 11th day of December 1989.


A second reading and public hearing was held on the 9th day of January, 1990, after notice of a public hearing on said ordinance was published as a Class II legal advertisement and upon motion of James Ashburn and seconded by


Elizabeth Martin .

Following said public hearing on a motion of James Ashburn, seconded by Elizabeth Martin, the Ordinance was passed on to the 3rd reading, set for January 16, 1990. It is now Ordered that the aforesaid Ordinance be, and hereby is Approved and Adopted by the County Commission of Monongalia County, West Virginia.

DATED this 16th day of January, 1990.


Eugene J. Sellaro
President


James A. Ashburn
Commissioner


Elizabeth M. Martin
Commissioner