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IN REPLY REFER TO:

MARCH 16, 1964

BAKERSFIELD CITY COUNCIL  
CITY HALL  
BAKERSFIELD, CALIFORNIA

GENTLEMEN:

AT THE REQUEST OF WALTER KAUFMANN, I HAVE CHECKED THE MATTER OF CONSTITUTIONALITY IN RESPECT TO PROHIBITING PICKETING BY TEENAGERS.

INsofar AS THE LAW IS CONCERNED, THERE IS NO DISTINCTION BETWEEN THE RIGHT OF PEACEFUL PICKETING BY MINORS AND ADULTS. THIS IS A STATEMENT OF A LEGAL OPINION, AND IS NOT INTENDED AS A CRITICISM OF ANY ACTION OF ANY LOCAL LAW ENFORCEMENT AGENCY IN THIS FIELD. IT OCCURS TO ME THAT IT WOULD BE MOST APPROPRIATE FOR THE CITY COUNCIL TO INSTRUCT THE CITY ATTORNEY TO WORK OUT A SET OF GROUND RULES IN RESPECT TO PICKETING BY MINORS, WHICH WILL CLEARLY EXPRESS THE BASIS OF ANY EXERCISE OF THE POLICE POWER WHICH MIGHT BE INVOKED TO CURB THIS BASIC CONSTITUTIONAL RIGHT.

IN REFERRING TO THE POLICE POWER, I AM NOT SPEAKING OF THE POLICE DEPARTMENT AS SUCH, BUT THE GENERAL POLICE POWER OF A MUNICIPALITY, COUNTY OR STATE TO ENCRoACH UPON THE EXERCISE OF CONSTITUTIONAL RIGHTS OF VARIOUS SORTS FOR THE PROTECTION AND PRESERVATION OF HEALTH, SAFETY, THE PUBLIC PEACE, MORALS AND GENERAL WELFARE.

THE WRITER AS AN INDIVIDUAL IS NOT FAVORABLY DISPOSED TO THE INDISCRIMINATE USE OF PICKETING, ALTHOUGH IT HAS BECOME A FAMILIAR WEAPON IN THE ARSENAL OF LABOR AND CIVIL RIGHTS GROUPS. DESPITE MY PERSONAL FEELINGS THAT PICKETING CAN OFTEN BE CONDUSIVE TO A BREACH OF THE PEACE, TRESPASS ON PRIVATE PROPERTY AND TACTICS WHICH LEAD TO MALICIOUS MISCHIEF, I RECOGNIZE THE DUTY OF AN ATTORNEY TO ASSERT THE CONSTITUTIONAL RIGHTS OF ANY AND ALL PERSONS UNLESS THOSE RIGHTS ARE DEFINITELY RESTRICTED BY LEGISLATIVE RULES WHICH ARE BASED UPON A CLEARLY EXPRESSED EXERCISE OF THE POLICE POWER.

I RECOGNIZE THE PROBLEMS OF LAW ENFORCEMENT AGENCIES, AND FEEL THE CITY COUNCIL SHOULD ACCEPT THE RESPONSIBILITY OF FORMULATING SUCH RULES AND NOT PLACE THE BURDEN AND RESPONSIBILITY OF AVOIDING POSSIBLE BREACHES OF THE PEACE UPON THE CHIEF OF POLICE OR ANY OTHER LAW ENFORCEMENT OFFICER WITHOUT LAYING DOWN DEFINITE RULES TO GUIDE THEM.

I REPEAT AGAIN THAT A MINOR HAS JUST AS MUCH OF A LEGAL RIGHT TO PICKET AS DOES AN ADULT, BUT HERE, AGAIN, WE MUST REALIZE THAT MINORS ARE SUBJECT TO CURFEW LAWS, SCHOOL REGULATIONS AND OFTENTIMES FOLLOW A COURSE OF ACTION WHICH IS CONTRARY TO THE EXPRESS WISHES OF PARENTS, WHO IN TURN HOLD

PUBLIC AGENCIES ACCOUNTABLE FOR THE ACTIONS OF YOUNGSTERS. WE MUST THEREFORE REALIZE WHAT LABOR GROUPS AND CIVIL RIGHTS GROUPS HAVE LEARNED; THAT THEY MUST SUBJECT PICKETS TO A RIGID COURSE OF TRAINING TO INSURE THE TYPE OF DISCIPLINE THAT WILL AVOID RIOTS AND OTHER BREACHES OF THE PEACE. ANY GROUP THAT DOES NOT RECEIVE SUCH TRAINING, WHETHER ADULT OR MINOR, MAY VERY EASILY BE INCITED INTO ACTS THAT CROSS THE LINE OF PEACEFUL ASSEMBLY AND PEACEFUL PICKETING.

THERE IS ALSO THE FURTHER PROBLEM THAT MANY ADULTS WILL RETALIATE AGAINST MINORS WHO WOULD NOT DO SO AGAINST ADULTS, AND THUS INCREASE THE POSSIBILITIES OF AN UNFORTUNATE INCIDENT WHEN THERE IS PICKETING BY MINORS.

I BELIEVE WE WOULD ALL AGREE THAT WE WOULD CURB PICKETING BY CHILDREN OF GRAMMER SCHOOL AGE, JUST AS IT SEEMS TO BE ACCEPTED THAT THERE WILL BE NO CURB OF PICKETING BY MINORS OF COLLEGE AGE. THEREFORE, THE QUESTION IS JUST WHERE TO DRAW THE LINE OF DEMARCATION, AND WHETHER TO INCLUDE ALL HIGH SCHOOL STUDENTS ON ONE SIDE OF THE LINE OR THE OTHER.

THESE GENERAL REMARKS ON MY PART HAVE BEEN MADE IN AN ATTEMPT TO BE FAIR TO ALL PARTIES CONCERNED, AND IN RECOGNITION OF THE RESPONSIBILITY FOR PRESERVING THE PEACE, AS WELL AS IN RECOGNITION OF THE FACT THAT WE ARE TOO PRONE TO CURB MINORS IN MANY ACTIVITIES THAT ARE RECOGNIZED AS PERMISSIBLE, IF NOT PROPER, ON THE PART OF ADULTS.

IT IS FOR THIS REASON THAT I FEEL THAT THE COUNCIL SHOULD INVESTIGATE THIS ENTIRE FIELD AND ASK THE CITY ATTORNEY TO WORK OUT AND FORMULATE AN ORDINANCE WHICH WILL NOTIFY EACH AND EVERY PERSON OF THE EXTENT OF HIS RIGHTS AND AS TO ANY LIMITATIONS UPON THEM.

RESPECTFULLY SUBMITTED,

JV:JW

JAMES VIZZARD