

Case against ad salesman hard to prove, experts say

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'Scene' employee says he's received calls of support

The arrest of a *Nashville Scene* employee on charges of promoting prostitution raises thorny questions about the responsibility of advertising sellers to ensure they are not acting as middlemen for illegal businesses, legal experts said yesterday.

To make their case, prosecutors will have to prove that classified sales assistant Nels Noseworthy knew that he was placing ads for prostitution businesses and not legitimate escort services.

Metro police say they have Noseworthy, 29, on tape, selling ads to undercover officers who made it clear they were seeking customers for prostitutes.

Reached by telephone, Noseworthy declined to discuss details of the case but said he had received an outpouring of calls, e-mails and letters of support from friends and family.

"I'm just a stand-up guy trying to do my job," he said.

Noseworthy, who remains employed at the weekly newspaper, said he wished he could make a living playing the saxophone full time.

"But this is Nashville, and people don't get paid to play music," he said.

While many details of the case have not been disclosed, some observers questioned whether authorities were improperly interpreting prostitution laws by blaming a salesman for the ulterior motives of advertising customers.

"The illegal conduct is not in the publishing of the ad but what occurs when someone responds to the ad," said Robert Vaughn, a Nashville attorney who handles drug and drug-paraphernalia cases. Noseworthy is accused of selling ads for escort businesses that included suggestive phrases like "XXX," "Sex in the City Escorts," and "\$200/hr."

Other legal experts say the conduct alleged in the *Nashville Scene* case appears to be criminal behavior that is not protected by the free-speech provisions of the First Amendment.

"If you have actual knowledge of a criminal activity, you're a conspirator — a participant in it," said Nashville defense attorney David Raybin. "The freedom to publish is not a license to commit a crime."

Still, Raybin said he wasn't sure whether a jury would be convinced that the advertising salesman was promoting prostitution.

Noseworthy remained free on bail yesterday pending a Jan. 27 court appearance.

Davidson County District Attorney General Torry Johnson said he believed prostitution laws had been used against media outlets elsewhere but couldn't immediately point to specific instances.

Mayor Bill Purcell said yesterday through a spokeswoman that he couldn't comment on the case because it was part of an ongoing criminal investigation.

Many newspapers have policies to avoid promoting illegal activities.

The problem is of particular concern to alternative weeklies, for which adult advertising is often a key source of revenue.

"All of our papers have a policy of not accepting advertising that, on the face of it, advertises illegal activities," said Richard Karpel, executive director of the Association of Alternative Newsweeklies. "It's not always possible to check behind every service.

"If you find out there's a problem later, you can pull (the ad)."

Incoming *Nashville Scene* publisher Chris Ferrell, who officially takes over at the beginning of next year, said he was in the midst of a review of all of the paper's advertising policies and procedures.

"We have steps in place to make sure we have only legitimate businesses advertising," Ferrell said.

Those policies include asking for business licenses of firms with no identifiable storefront.

Ferrell said he believed business licenses were provided to *Nashville Scene* for the ads involved in the criminal case.

Metro police spokesman Don Aaron said, "There were conversations about business licenses with undercover officers, but I cannot discuss the specifics, because that would go directly to the evidence in this pending case."

Ferrell, a former Metro councilman who fought for stricter regulation of adult businesses, said he didn't yet know how he would deal with the issue of adult ads.