

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Ken Owen, Director of Christian Community Concerns, submitted a written statement (filed) to Council and expressed concern regarding confusion about what is, and is not, acceptable seasonal religious expression in the community. He cited the following case law and stated that the following forms of religious expression are legal under the constitution:
 1. Students are free to express their religious beliefs in school (Lovell v. City of Griffin, 303 U.S. 444 1938; Westfield High School L.I.F.E. Club v. City of Westfield, 249 F. Supp. 2D 98 D. Mass. 2003);
 2. At school students can sing Christmas carols at concerts, teach the biblical origins of Christmas, and perform the Christmas story of Mary, Joseph, Jesus, and the shepherds (Florey v. Sioux Falls School District, 619 F. 2D 1311 6th Cir. 1980; Stone v. Graham, 449 U.S. 39 1980); and
 3. Nativity displays can be placed in schools, parks, and government buildings (Americans United for Separation of Church and State v. City of Grand Rapids, 980 F. 2D 1538 6th Cir. 1992; West Virginia v. Barnette, 319 U.S. 624, 642 1943; Lynch v. Donnelly, 465 U.S. 668, 671 1984).

In conclusion Mr. Owen stated that the U.S. Constitution, laws, and court decisions are all construed to protect and permit religious expression in both public schools and government buildings.

- Donna Phillips, representing Friends of Lodi Lake, expressed opposition to the Extreme Sports proposal by the Parks and Recreation Department to be brought before Council in January. She stated that it would bring noise and a carnival atmosphere to a residential area. Friends of Lodi Lake would like to keep the park serene and peaceful. She urged Council to reject the proposal.
- Ron Bernasconi recalled that a time limit was placed on speakers at Council's special joint meeting with the Recreation Commission on November 10. He noted that the following day, City Clerk Blackston provided Council with a memorandum, which indicated that the five-minute limit applied to non-agenda items. Mr. Bernasconi stated that he had a presentation prepared for the November 10 meeting, which spanned a decade of facts and circumstances; however, he was not given adequate time to make the presentation. He reported that since 1993 the City's relationship with the Boosters of Boys and Girls Sports (BOBS) has created joint duties imposed by state law to screen out violent sexual criminals who have volunteered to have authority over youth on public schools, parks, and recreational facilities. Mr. Bernasconi stated that he had documents, which established these facts; however, they were not included in the 97-page meeting packet that Council received on November 10, though they had been in the custody of the City Attorney. He reminded Council Members that staff was supposed to fully apprise them of the legal and operational relationship between the City and BOBS. The documents provided evidence that various public officials engaged in willful or negligent misconduct related to the refusal to implement and/or obey state law to protect youth from violent or sexual criminals. He believed they were serious matters that deserved public disclosure. Mr. Bernasconi referenced documents he submitted to Council (filed) and reported that in 1995 Deputy City Attorney John Luebberke advised the Recreation Commission that the 1993 Public Resources Code sees these codes as all inclusive and that City employees and volunteers having disciplinary authority over minors must be screened. He stated that Mr. Luebberke also acknowledged a relationship between the City and the BOBS and recommended that all volunteer positions be screened. Mr. Bernasconi asked Council to grant him an opportunity to fully address these issues.

City Attorney Hays recalled that the City Clerk's memorandum also indicated that Council's procedures provide for a motion to limit debate, which was what occurred on November 10. He stated that the program referred to by Mr. Bernasconi had been implemented by the City and

filed 12-17-03

K. Owen
Item F

Christian Community Concerns

December 4, 2003

THIS CHRISTMAS SEASON, I AM GREATLY CONCERNED ABOUT THE WIDESPREAD CONFUSION OVER WHAT IS AND IS NOT ACCEPTABLE SEASONAL RELIGIOUS EXPRESSION IN OUR COMMUNITIES.

OVER THE PAST FEW YEARS, IT SEEMS THAT GRAVE MISUNDERSTANDINGS OF THE ORIGIN & MEANING OF THE PHRASE "**SEPARATION OF CHURCH & STATE**" HAVE ENCOURAGED MANY GOVERNMENT OFFICIALS TO EMBARK ON A MISSION TO REMOVE ALL REFERENCES TO RELIGION FROM SCHOOLS, GOVERNMENT BUILDINGS, AND PUBLIC PROPERTY.

THE FIRST AMENDMENT SIMPLY STATES THAT "CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION OR PROHIBITING THE FREE EXERCISE THEREOF."

THE PHRASE "SEPARATION OF CHURCH AND STATE" DOESN'T EVEN APPEAR IN THE CONSTITUTION. IT ORIGINATED IN 1802 IN A PRIVATE LETTER FROM PRESIDENT THOMAS JEFFERSON TO A GROUP OF BAPTIST MINISTERS IN DANBURY CONNECTICUT 13 YEARS AFTER THE FIRST AMENDMENT WAS PASSED. SINCE THEN THE COURTS HAVE RULED THAT ELIMINATING ALL SIGNS OF RELIGION FROM THE PUBLIC SQUARE IS JUST AS UNCONSTITUTIONAL AS ESTABLISHING A RELIGION.

SO, IN RESPONSE TO RECENT EFFORTS TO CENSOR CHRISTMAS IN OUR COMMUNITIES, PERHAPS IT WOULD HELP TO CLARIFY THE FORMS OF RELIGIOUS EXPRESSION THAT ARE LEGAL UNDER THE CONSTITUTION EVEN UNDER TODAY'S CONFUSED CASE LAW.

1. **STUDENTS ARE FREE TO EXPRESS THEIR RELIGIOUS BELIEFS IN SCHOOL.** AS LONG AS IT'S NOT MATERIALLY DISRUPTIVE, STUDENTS MAY EXPRESS THEIR BELIEFS VERBALLY THROUGH CLOTHING THAT CONVEYS RELIGIOUS MESSAGES WITH WORDS, COLORS, OR SYMBOLS; OR THROUGH WRITTEN MATERIALS LIKE SCHOOL ASSIGNMENTS, RELIGIOUS CARDS, GIFTS, OR TRACTS GIVEN TO TEACHERS & CLASSMATES. (LOVELL V. CITY OF GRIFFIN, 303 U.S. 444 1938; WESTFIELD HIGH SCHOOL L.I.F.E. CLUB V. CITY OF WESTFIELD, 249 F. SUPP. 2D 98 D. MASS. 2003.)

2. AT SCHOOL, STUDENTS CAN SING CHRISTMAS CAROLS AT CONCERTS, TEACH THE BIBLICAL ORIGINS OF CHRISTMAS, & PERFORM THE CHRISTMAS STORY OF MARY, JOSEPH, JESUS, AND THE SHEPHERDS.

THE CONSTITUTION DOES NOT REQUIRE THE EXCLUSION OF RELIGION FROM PUBLIC INSTITUTIONS. CHRISTMAS IS PART OF OUR HERITAGE & INGRAINED IN OUR CULTURE; THEREFORE, EXPRESSION OF IT THROUGH ART & MUSIC & TEACHING OF IT AS HISTORY SERVE BOTH A RELIGIOUS & SECULAR PURPOSE, PROVIDED THESE ACTIVITIES PROMOTE THE "ADVANCEMENT OF THE STUDENTS' KNOWLEDGE OF OUR SOCIETY'S CULTURAL & RELIGIOUS HERITAGE, AS WELL AS THE PROVISION OF AN OPPORTUNITY FOR STUDENTS TO PERFORM A FULL RANGE OF MUSIC, POETRY, & DRAMA THAT IS LIKELY TO BE OF INTEREST TO THE STUDENTS & THEIR AUDIENCE."

ANY OF THESE ACTIVITIES CAN BE CONDUCTED IN PUBLIC SCHOOLS WITHOUT CREATING AN ESTABLISHMENT CLAUSE PROBLEM.

(FLOREY V. SIOUX FALLS SCHOOL DISTRICT, 619 F. 2D 1311 6TH CIR. 1980; STONE V. GRAHAM, 449 U.S. 39 1980.)

3. NATIVITY DISPLAYS CAN BE PLACED IN SCHOOLS, PARKS, & GOVERNMENT BUILDINGS.

NO SUPREME COURT DECISION HAS EVER FORBIDDEN A PRIVATE CITIZEN FROM SETTING UP A NATIVITY DISPLAY IN A PUBLIC PARK, AS PARKS, STREETS, AND SIDEWALKS ARE ALL PUBLIC FORUMS TRADITIONALLY DEVOTED TO "ASSEMBLY & DEBATE."

SUCH DISPLAYS MAY ALSO BE PLACED IN PUBLIC BUILDINGS PROVIDED THE GOVERNMENT HAS OPENED THE PROPERTY FOR EXPRESSIVE ACTIVITY. THE FREE EXERCISE CLAUSE ASSURES RELIGIOUS SPEAKERS THE SAME ACCESS TO PUBLIC FORUMS GIVEN TO SECULAR SPEAKERS. (AMERICANS UNITED FOR SEPARATION OF CHURCH & STATE V. CITY OF GRAND RAPIDS, 980 F. 2D 1538 6TH CIR. 1992.) NOR CAN PRIVATE CITIZENS BE FORCED TO INCLUDE NONRELIGIOUS OBJECTS SUCH AS SNOWMEN IN THEIR FAITH-BASED DISPLAYS. (WEST VIRGINIA V. BARNETTE, 319 U.S. 624, 642 1943)

FURTHERMORE, EVEN UNDER CURRENT DECISIONS, CITY GOVERNMENTS MAY INCLUDE A NATIVITY IN A SEASONAL DISPLAY PROVIDED 1- THERE ARE A SUFFICIENT NUMBER OF SECULAR OBJECTS ALONG WITH RELIGIOUS ONES. 2- THE SECULAR OBJECTS ARE IN CLOSE PROXIMITY TO THE RELIGIOUS ONES. 3- OVERALL, THE DISPLAY IS SUFFICIENTLY SECULAR. (LYNCH V. DONNELLY, 465 U.S. 668, 671 1984. IN CONCLUSION, THE U.S. CONSTITUTION, LAWS, AND

COURT DECISIONS ARE ALL CONSTRUED TO PROTECT AND PERMIT RELIGIOUS EXPRESSION IN BOTH PUBLIC SCHOOLS AND GOVERNMENT BUILDINGS. SO, ATTEMPTS TO REMOVE CHRIST FROM CHRISTMAS DO NOT STEM FROM THE CONSTITUTION, BUT FROM THOSE WHO SIMPLY SEEK TO SILENCE THE CHRISTIAN MESSAGE, AND THAT IS A VIOLATION OF THE CONSTITUTION.

HOPEFULLY THIS WILL HELP CLEAR UP SOME OF THE CONFUSION ABOUT KEEPING THE CHRISTMAS STORY A VITAL PART OF OUR HERITAGE.

MERRY CHRISTMAS,

KEN OWEN

A handwritten signature in cursive script that reads "Ken Owen".

DIRECTOR, CCC

This legal opinion has been provided by Alan E. Sears President & General Counsel
"ALLIANCE DEFENSE FUND"