

COUNTIES:  
CONSTITUTIONAL LAW:

Article 1, §7, Constitution of Missouri prohibits public funds from being used to employ a full-time chaplain for the Jackson County Jail.

OPINION NO. 356

September 30, 1969

Honorable Alvin E. Waits  
State Representative, District 20  
State Capitol Building  
Jefferson City, Missouri 65101

Dear Representative Waits:

This is in response to your request for an opinion from this office in the following language:

"I have been requested to obtain a ruling from your office to determine if Article I, Section 7 of the Missouri Constitution precludes the expenditures of public funds to employ a clergyman as a full time chaplain for the Jackson County Jail.

"I understand an individual employed as a chaplain would have no religious duties other than at the jail."

We have been unable to find any appellate court decision in this state where the above question has been considered.

Article I, §6, Constitution of Missouri 1945 provides:

"That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same."

In substance this section provides that no person should be compelled to attend, maintain or support any church, creed or denomination of religion or any priest, minister, preacher or teacher

Honorable Alvin E. Waits

of religion. This protects the individual person from being compelled by law to do these particular things. This section is substantially the same as Article 2, §6 of the Constitution of Missouri 1875.

Article I, §7, Constitution of Missouri 1945 provides:

"That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship."

In substance this section provides that no money shall be taken from the public treasury, directly or indirectly, in aid of any church, sect, denomination of religion or in aid of any priest, preacher, minister or teacher as such. It prohibits public funds from being used for such purposes. This section is identical with Article 2, §7 of the Constitution of Missouri 1875.

In interpreting the constitution, it is proper to consult the Debates of the constitutional convention in determining the meaning of a constitutional provision. *Preisler v. Hayden*, 309 S.W.2d 645 (Mo. 1958).

The following proceedings are recorded in Volume 2, page 222 of the Debates of the Missouri Constitution of 1875 relating to §6 and 7, Article II of the 1875 Constitution.

"The 6th section was read by the Secretary.

"Mr. Lackland: I have one objection to that and that is this. It seems to me to cut off the right of any public body as this Convention or the General Assembly, from employing a chaplain. I think we ought to provide ourselves with that right if we have use to employ one. I prefer myself the 10th section of the present Constitution, & hope some gentleman will offer it as a substitute in place of the 6th section of the report.

"Mr. Halliburton: I do not see any earthly distinction between the two sections, only in the verbiage.

Honorable Alvin E. Waits

"The 6th section was adopted.

"The Secretary read the 7th section.

"The Chairman: If there is no objection [15, 152] the section will be considered adopted.

"Mr. Wallace: I understand it is admitted that that section is intended to preclude a legislative body or convention from employing a chaplain.

"Mr. Gottschalk: The section speaks for itself.

"The Chairman: The seventh section has been adopted unless the gentleman objects.

"Mr. Wallace: Well, I do object.

"The Chairman: Objection being made then the question will be on the adoption of the seventh section.

"Mr. Lackland: I suggest also that that is an objection to the adoption of the 7th section, prohibiting any legislative body from employing a chaplain.

"Mr. Gantt: The Constitution has always done that.

"Mr. Halliburton: It is the same in the present Constitution.

"The section was adopted."

Section 10 of the Constitution of 1865 referred to by Mr. Lackland was substantially the same as §6 which was being considered.

It is apparent from these proceedings that when the members of the Constitutional Convention of 1875 were adopting these provisions, they thought that they would prohibit any public body from using public funds to employ a chaplain.

When §6 and 7 of the Constitution of Missouri 1945 were being considered by the 1945 Constitutional Convention the following proceedings transpired as found on page 1158 of the proceedings of the Constitutional Convention of 1945:

Honorable Alvin E. Waits

"Mr. Damron: . . . Now, these two sections deal with different subjects. Section 7 restricts against the taking of money from the public treasury, directly or indirectly in aid of any church, sect, denomination of religion and so forth. Whereas, Section 6, directed to the protection of the rights of individuals, says, 'no person can be compelled to erect, support or attend any place or system of worship or to maintain or support any priest, minister, teacher', and so forth. Section 6 protects the right of individuals. Section 7 is designed to protect public monies against being used for religious purposes. Now, I think the two sections, the two old sections ought to be restored in the Constitution because they are very important sections, 7 especially, I think is very important because it is the one that protects the misuse of public funds for religious purposes."

It is apparent from these Debates that the members of the Constitutional Convention of 1945 considered that these two sections and especially section number 7 were designed to protect public moneys from being used for religious purposes in any manner.

In *Harfst v. Hoegen*, 163 S.W.2d 609 (Mo. en banc 1942), the Supreme Court considered Article 2, §7 in regard to the use of public funds in a public school where sectarian religion was being taught with the regular school subjects by teachers employed and paid by the public school board. After quoting Article 2, §7 the court stated, l.c. 613:

". . . Thus, we have an explicit interdiction of the use of public money for a teacher of religion as such which has been violated by the board. . . ."

The court further states, l.c. 614:

". . . Nevertheless, the question confronting us is one only of law; of upholding our Constitution as it is written which, as lawyers and judges, we have dedicated our professional life to do. The constitutional policy of our State has decreed the absolute separation of church and state, not only in governmental

Honorable Alvin E. Waits

matters, but in educational ones as well. Public money, coming from taxpayers of every denomination, may not be used for the help of any religious sect in education or otherwise. . . ."

We believe that it is clear that Article 1, §7 of the Constitution of Missouri prohibits and was intended to prohibit any public funds from being used directly or indirectly in aid of any church, priest, preacher, minister or teacher for performing or rendering any services of a religious nature. This is true without regard to whether any particular form of worship or belief is espoused. Certainly, the use of public funds to compensate a chaplain for rendering any service of a religious nature to anyone or the giving of public funds in any manner for such services is prohibited by this constitutional provision.

CONCLUSION

It is the opinion of this department that Article 1, §7, Constitution of Missouri prohibits public funds from being used to employ a full-time chaplain for the Jackson County Jail.

The foregoing opinion, which I hereby approve was prepared by my Assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH  
Attorney General