

December 30, 1974

OPINION LETTER NO. 355  
Answer by Letter - Rothschild

Honorable Morris G. Westfall  
Representative, District 133  
House Post Office  
Capitol Building  
Jefferson City, Missouri 65101

Dear Representative Westfall:

This is in response to your question as stated:

"Is it constitutional for the Missouri Highway Commission and in turn the Missouri Highway Department to interpret the billboard laws for the State of Missouri in such a manner as to require a permit for church billboards that issue a welcome to town and give direction for location of church. To phrase the question another way, is it constitutional to require the church to remove any sign as long as they have the permission of the owner of the property on which the signs stands."

We assume that your question is whether it violates the Constitution for the Highway Beautification Act (Sections 226.500, RSMo, et seq.), and regulations promulgated pursuant thereto, to be enforced against a church. We further assume that you are not questioning the validity of the act in general, but simply its application to a religious institution. Therefore, it is assumed that you are asking whether religious institutions enjoy some immunity to the normal application of this law, as provided by the state or federal constitution.

The Supreme Court of the United States discussed a very similar situation in Cox v. New Hampshire, 312 U.S. 569 (1941). In that case, several Jehovah's Witnesses claimed many of their fundamental rights, including the

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freedom of worship and freedom of speech, were violated by a state statute which prohibited a "parade or procession" upon a public street without a special license. In affirming the decision of the Supreme Court of New Hampshire, which upheld the statute, the Supreme Court stated, at Page 574:

"Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions. As regulation of the use of the streets for parades and processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorably associated with resort to public places. Lovell v. Griffin, 303 U.S. 444, 451; Hague v. Committee for Industrial Organization, 307 U.S. 496, 515, 516; Schneider v. State, 308 U.S. 147, 160; Cantwell v. Connecticut, 310 U.S. 296, 306, 307."

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In addition, the court concluded, at Page 578:

"The argument as to freedom of worship is also beside the point. No interference with religious worship or the practice of religion in any proper sense is shown, but only the exercise of local control over the use of streets for parades and processions."

This view has been reiterated by the United States District Court for the Western District of Missouri in the case of Mickey v. Kansas City, Mo., 43 F.Supp. 739 (W.D.Mo. 1942). In that case, the court upheld several ordinances of the City of Kansas City against the attack that they violated the constitutional rights of several Jehovah's Witnesses, including the freedom of worship. See also Commonwealth v. Pascone, 33 N.E.2d 522, 525 (Mass. 1941), where a similar challenge to a city ordinance was rejected. The court stated:

"No automatic exemption from the requirements of the statute arises on constitutional grounds from the fact that the merchandise sold consisted of pamphlets of a religious nature. Neither the press nor religion, fundamental as both are in the political and social policy of this country, can claim in all relations, at all times, and in all places absolute freedom from reasonable regulation. One could not claim a constitutional right to continued, exclusive occupation of a particular area of a public street for the purpose of maintaining there a book store for the sale of religious books. The infringement upon the public right is the same whether the articles sold are religious pamphlets or other portable articles of merchandise. The statute is not a general and indiscriminating attack upon a commonly harmless means of communicating ideas and therefore an unnecessary and unwarranted interference with a constitutionally protected liberty, as the ordinance in the first case might be thought to be. The statute aims at a particular evil and endeavors to remedy it by specific means appropriate to that end. It goes no further

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than is required to curb the evil. If in some few instances it may affect in some degree the press and religion, its interference with them is incidental only and no greater than or different in quality from that to which constitutional liberties are frequently and unavoidably subject from necessary police regulations. . . . "

Therefore, it is our view that, if Sections 226.500, RSMo, et seq., are otherwise valid (and we do not answer this question in this opinion), then it may be applied to religious institutions as it would be applied to other individuals or entities.

Very truly yours,

JOHN C. DANFORTH  
Attorney General