

November 11, 2009

VIA FACSIMILE and U.S. MAIL

Lance Baker, City Attorney  
City of Clarksville  
City Hall  
One Public Square, Suite 401  
Clarksville, TN 37040

Dear Mr. Baker,

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION  
OF TENNESSEE

P. O. BOX 120160  
NASHVILLE, TN 37212

Phone: (615) 320-7142  
Fax: (615) 320-7260  
www.aclu-tn.org

It has been brought to our attention that the City of Clarksville has been promoting and/or endorsing Christianity in its annual "Christmas on the Cumberland" celebration. According to the information we have obtained through a public records request we filed earlier this year, this annual celebration oftentimes involves a nativity display that is jointly sponsored by the City and Grace Church of the Nazarene. It is also troubling that it does not appear as though the City has opened this celebration to all people and organizations within the City of Clarksville, but instead has singled out Grace Church of the Nazarene for favorable treatment. This apparent promotion and endorsement of Christianity is a violation of the First Amendment.

"Christmas on the Cumberland" is listed in flyers as being a "production of the City of Clarksville." The Sixth Circuit uses the endorsement test, asking whether a reasonable observer would believe that a particular action constitutes an endorsement of religion by the government, in order to determine if government actions violate the First Amendment. *Adland v. Russ*, 307 F.3d 471, 479 (6th Cir. 2002). A practice endorses religion if it conveys a message that religion or a particular religious belief is favored or preferred. *County of Allegheny v. ACLU*, 492 U.S. 573 (U.S. 1989).

According to our information, the City of Clarksville paid \$200 for animals in the Grace Church nativity last year. The public records provided in response to our request include a hand written expense form, with \$200 allotted to "animals for nativity." If the City of Clarksville did pay for the animals, this was a violation of the Establishment Clause. The City of Clarksville must not provide funds for Grace Church of Nazarene to perform biblical plays or displays. The City's practice of funding a nativity scene in the City's annual "Christmas on the Cumberland" celebration is constitutionally suspect and such practice must be remedied.

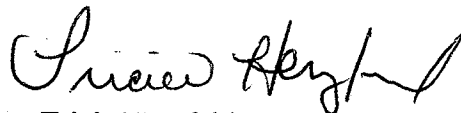
While our research indicates that the City provides an application for the public to sign up for the Christmas parade on the City website (<http://www.cityofclarksville.com/christmasonthecumberland/pdf/Christmas%20Parade%20Entry%20Form%20and%20Rules.pdf>), we have been unable to locate a public application to perform at McGregor Park during the Christmas on the Cumberland celebration. As such, it appears as though involvement (displays, performances, etc.) in this government sponsored event is not open to the public and participation is garnered upon invitation only.

Where a public forum has been created, an equal access policy, extending to both religious groups and non-religious groups, is compatible with Establishment Clause issues. *Widmar v. Vincent*, 454 U.S. 263 (U.S. 1981). In *ACLU v. Wilkinson* the court held that the City could not limit the use of the forum to religious nativity. *ACLU v. Wilkinson*, 895 F.2d 1098, 1102. The impression of an endorsement of religion must also be dispelled by advising the public that "the area is a public forum available to all responsible citizens and civic and religious groups for holiday ceremonies, pageants, and displays." *ACLU v. Wilkinson*, 895 F.2d 1098, 1100. Thus, the City of Clarksville must make the "Christmas on the Cumberland" equally open to all religious and civic groups.

We are not asking the City of Clarksville to do away with the "Christmas on the Cumberland" celebration altogether. However, the City of Clarksville must have an equal access policy for participation in "Christmas on the Cumberland" to all religious and non-religious groups, must include appropriate disclaimers so that the City's non-endorsement is clear, and must not provide funding to create or maintain such a religious display.

Please let us know by no later than November 24, 2009 in writing whether you will agree to end this unlawful endorsement of religion or we will have no choice but to explore alternative means to accomplish these goals. We look forward to working together with you to resolve this issue.

Sincerely,



Tricia Herzfeld  
Staff Attorney