



JAMES K. HAHN
CITY ATTORNEY

Office of the City Attorney
Los Angeles, California

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WRITER'S DIRECT DIAL: (213) 485-7268
FAX: (213) 485-8899
TTY:

Rosalind Stewart, General Manager
Department of Neighborhood Empowerment
305 E. First Street
Los Angeles, California 90012

Re: Legal Issues Regarding Neighborhood Councils
Faith-Based Organizations

Dear Ms. Stewart:

This letter responds to your request that our office determine whether the City of Los Angeles can provide funding to neighborhood councils that may include faith-based organizations without violating the constitutional principle requiring a separation of church and state. (U.S. Const. 1st Amend.; Cal. Const. Article 1 § 4.) Your question and our answer is set forth below.

Question:

If a neighborhood council includes faith-based organizations, may the City provide funding to that neighborhood council without violating the Establishment Clause of the United States Constitution and the principles of separation of church and state.

Answer:

Yes. The inclusion of individuals belonging to faith-based organizations does not prevent the City from providing funding to the neighborhood councils. Any concern that public funds allocated to a neighborhood council might violate constitutional doctrine proscribing establishment of religion is attenuated by the secular purpose for which the neighborhood council system was created and intended to function.

BACKGROUND AND ANALYSIS

A. Neighborhood Councils

Neighborhood councils were created by City Charter and by City ordinance expressly “[t]o promote more citizen participation in government and make government more responsive to local needs. . . .” Charter § 900. “Neighborhood councils shall include representatives of the many diverse interests in communities and shall have an advisory role on issues of concern to the neighborhood.” *Id.* Since the City Charter provides that “[t]he Mayor and Council shall appropriate funds for the Department of Neighborhood Empowerment and for the startup and functioning of neighborhood councils . . . ,” the question presented is further refined to assume that public funds will be allocated, either directly or indirectly, to neighborhood councils. Charter § 911.

B. Purpose Of The Establishment Clause

The genesis of the legal doctrine mandating a separation of church and state springs from ideas expressed by those (in particular, Roger Williams, Thomas Jefferson and James Madison) who drafted the First Amendment.¹ This amendment, in pertinent part, heralds: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;. . . .” U.S. Const. Amend. I.

This portion of the First Amendment, commonly referred to as the Religious Clauses; (Free Exercise Clause and Establishment Clause)² have been interpreted by the Supreme Court to express two differing goals: (1) individual freedom of religious choice and (2) avoiding political strife and encouraging a pluralistic society by separating the church and the state.³ The due process clause of the Fourteenth Amendment makes the provisions of the First Amendment binding on the states. See, Committee for Public Education v. Nyquist (1973) 413 U.S. 756, 760 (fn. 4).

Similarly, California’s Constitution guarantees the “[f]ree exercise and enjoyment of religion without discrimination or preference.” Cal. Const. Article 1 § 4 [preference clause]. This section continues: “[t]he Legislature shall make no law respecting an establishment of religion.” *Id.* [establishment clause]. Although expressing like principles, “[r]ights guaranteed by this Constitution are not dependent on those guaranteed by the U.S. Constitution.” Cal. Const. Article 1 § 24.

¹ *Toward a Constitutional Definition of Religion*, 91 Harv. L. Rev. 1056, 1057-60 (1978).

² The Free Exercise provisions are neither germane nor analyzed here.

³ *Toward a Constitutional Definition of Religion*, 91 Harv. L. Rev. at 1057-60.

Nevertheless, the analysis under both federal or State constitutional principles is the same because the primary evils that both [establishment] clauses were intended to protect against are "sponsorship, financial support, and active involvement of the sovereign in religious activity." Johnson v. Huntington Beach Union High Sch. Dist. (1977) 68 Cal.App.3d 1, 11; Lemon v. Kurtzman (1971) 403 U.S. 602, 612; Walz v. Tax Commission (1970) 387 U.S. 664, 668; see also, Okrand v. City of Los Angeles (1989) 207 Cal.App.3d 566, 573, fn. 6.

C. The Lemon Test

For many years Lemon v. Kurtzman (1971) 403 U.S. 602, a case involving state aid to parochial schools for teachers' salaries, textbooks, and instructional materials, has been the landmark U.S. Supreme Court Establishment Clause case. Lemon v. Kurtzman, (1971) 403 U.S. 602. Although Lemon is federal authority, California courts view the Lemon tripartite test as "a touchstone with which to identify instances where the objectives of the establishment clause have been compromised." Okrand v. City of Los Angeles (1989) 207 Cal. App. 3d 566, 573, fn. 6.

In order to pass constitutional muster under the Lemon test, the challenged action of the government must:

1. have a secular purpose;
2. have a principal or primary effect which neither advances nor inhibits religion; and
3. does not foster excessive state entanglement with religion.

If the challenged government practice fails any of the three prongs of the Lemon test, then the Establishment Clause has been violated. Edwards v. Aguillard (1987) 482 U.S. 578, 583.

Here, application of the Lemon test is the most instructive way to analyze the question presented.

Secular Purpose

"The purpose prong of the Lemon test asks whether government's actual purpose is to endorse or disapprove of religion." Edwards v. Aguillard (1987) 482 U.S. 578, 585. If the government action has a secular purpose rather than a religious purpose, it passes this part of the test. Lemon supra at 612. The Ninth Circuit has taken a less stringent approach holding that this first prong is satisfied if one purpose of the government action has a secular purpose. "When there are both religious and legitimate,

sincere secular purposes motivating legislation, it appears that the existence of the secular purpose will satisfy the Lemon prong.” Cammack v. Waihee, 932 F.2d 765 (9th Cir. 1991), cert. denied, _ U.S. _, 112 S.Ct. 3027 (1992), citing Lynch v. Donnelly (1984) 465 U.S. 668, 680 and Wallace v. Jaffree (1985) 472 U.S. 38, 56.

The intent and purpose of the Charter provision for the establishment of the neighborhood councils is a non-religious or secular purpose. The first prong of Lemon is satisfied under either the Ninth Circuit or the Supreme Court standards.

Advance or Inhibit Religion

Under the second prong of the Lemon analysis, courts consider whether a statute or governmental practice touches upon religion; if so, to be permissible under the Establishment Clause, “it must neither advance nor inhibit religion in its principal or primary effect. . . .” County of Allegheny v. ACLU (1989) 492 U.S. 573, 592-593. This is also the rule in the 9th Circuit. See, Cammack v. Waihee, 932 F.2d 765, 777-778 (9th Cir. 1991), cert. denied, _ U.S. _, 112 S. Ct. 3027 (1992).

Encouraging members of the community to participate in neighborhood councils, with the hope that government will be more responsive to community concerns or needs, does not have as the principle or primary effect the advancement or inhibition of religion. Indeed, the Charter requires that neighborhood councils shall include representatives of the many “diverse interests in communities. . . .” Charter § 900; see also, Charter § 906(a)(3). It is also clear that, in the certification process, the Department of Neighborhood Empowerment is charged with ensuring that “the members of the neighborhood council will reflect the diverse interests within their area . . .” Charter § 906 (a)(3).

Here, by funding neighborhood councils, the City’s intent is neither to advance nor inhibit religion, but rather to remain neutral while providing a source of funds for the startup and function of neighborhood councils. Charter § 911.⁴

Excessive Entanglement

The third and final prong of the Lemon test is an analysis of whether government action results in excessive entanglement with religion. The Ninth Circuit has held that “the entanglement prong seeks to minimize the interference of religious authorities with secular affairs and secular authorities in religious affairs.” Cammack, *supra* at 780.

⁴ Note, Cal. Const. Article XVI section 5 also prohibits the City from funding, aiding, or supporting any religious creed, church, or sectarian denomination or purpose.

Rosalind Stewart, General Manager
Department of Neighborhood Empowerment
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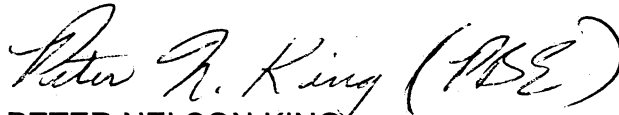
"The entanglement prong of the Lemon test is properly limited to institutional entanglement." Lynch v. Donnelly, 465 U.S. 668 at 689 (O'Connor, J., concurring).

Nothing in the City's Charter or Plan for a citywide system of neighborhood councils, as contemplated, portends an environment which fosters excessive entanglement between the City and a religious group. Although representatives of those groups may participate in the governance of neighborhood councils, that participation would not involve the intrusion of either the government or those groups in the affairs of the other.

Based on the above, it is our view that the appropriation of City funds for the development and support of neighborhood councils for the purpose of encouraging all members of the community to participate in the political process will not violate constitutional principles mandating a separation of church and state.

Please let us know if we can be further assistance to you in connection with this matter.

Very truly yours,



PETER NELSON KING
Deputy City Attorney

PNK:rp

(64383)

cc: The Honorable Richard J. Riordan, Mayor
Each member of the City Council
Each member of the Board of Neighborhood Commissioners