



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
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March 7, 2004

Mayor Randy A. Brailsford
Salem City Office
30 West 100 South
Salem, UT 84653
(801) 423-2770

Dear Mayor Brailsford,

Following last year's Salem Days celebration, we received a number of complaints from Salem City residents that your city is using government resources to sponsor and promote LDS Church activities. Specifically, the complaints concern Salem City advertising and promoting an LDS "Family Fireside" in conjunction with your Salem Days events. The advertisements were published in the Salem City Newsletters and apparently distributed to all your local residents with their utility bills. The complaints also assert that Salem City Police and other governmental officials provide traffic control and other services in assistance of the church activities. We are writing because of the important constitutional issues involved.

Under the 1st Amendment to the United States Constitution, made applicable to the States and local authorities under the 14th Amendment, there is a ban on the use of governmental resources either to establish or further the interests of religious entities. In 1971, the United States Supreme Court case of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), provided a three part test to determine if a governmental act was prohibited under the Constitution. To be constitutional, any governmental aid or assistance must: first, have a secular purpose; second, neither advance nor inhibit religion; and third, not foster an excessive entanglement with any specific religion. More recently, the Court case of *Agostini v. Felton*, 521 U.S. 203 (1997), clarified the meaning of this test, holding that any governmental aid or assistance provided to a religious organization must be allocated on neutral criteria. To meet this standard, allocations cannot favor or disfavor any particular religion; moreover, any aid or assistance must be made available to both secular and religious beneficiaries on a non-discriminatory basis.

The assistance your city provides the LDS Church does not seem to meet the Court's requirement. As we understand your city's policy, the Salem City Newsletter only publishes announcements for city activities and all announcements are placed in the newsletter at either your discretion or the discretion of the city office staff. Nevertheless, according to Jeff Nielson

from your city offices, the city's newsletter has contained an announcement of the LDS fireside for the last several years. By promoting an LDS activity while at the same time precluding all other religious and secular groups from access to your city's newsletter and other resources, there appears to be clear favoritism and discrimination in the allocation of aid available from your city. As we believe these actions to be constitutional violations, we strongly urge you and the City of Salem to discontinue your sponsorship and promotion of the LDS Church activities. Alternatively, the city could establish and publicize non-discriminatory criteria under which all secular and other religious groups would have an opportunity to access any available city resources, such as the Salem City Newsletter.

We hope that you recognize the importance of this matter and are willing to work to ensure that the constitutional rights of all your citizens are protected. As assurance, we respectfully request a written acknowledgment of our concerns. Also, if you have a different understanding of the constitutional requirements as they apply to your city and your resource allocation process, we would welcome your response detailing your perspective.

Sincerely,

Margaret Plane
Staff Attorney