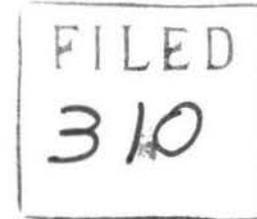


August 27, 1971

OPINION LETTER NO. 310
Answer by letter-Klaffenbach

Mr. Joseph Jaeger, Jr.
Director of Parks
Missouri State Park Board
1204 Jefferson Building
Jefferson City, Missouri 65101



Dear Mr. Jaeger:

This letter is in response to your opinion request in which you ask the following question:

"In view of the Constitution of the State of Missouri as well as both United States and State Supreme Court decisions, I should like to request an opinion from you as to whether or not the Missouri State Park Board is permitted to allow organized religious services on a regular basis in public-use facilities, including land and buildings, on areas owned or controlled by this agency."

It is our further understanding that the parks have several different types of designated areas. That is, they have areas for campers, others for picnickers, and still other areas house facilities which are rented by certain groups such as the Boy Scouts for a fee which permits them to occupy the improved facilities for a certain period of time. We also understand that the rental facilities are not open for free public use and are considered closed areas.

It is also our understanding that the present question does not involve any rental and that the churches involved wish to use any available areas which are open to the public without charge for religious services and that other non-religious groups are not given such use privileges. Such services generally are intended to be conducted on Sunday mornings and either in amphi-theaters or open areas.

Mr. Joseph Jaeger, Jr.

We also wish to point out that we are not here considering a question of the exercise of free speech in a public area but are considering the use of public facilities by a private organization for purely religious purposes whether it be non-profit or profit and whether it be an organized corporate body or an association of persons interested in a common religious objective.

Under Chapter 253 of the Missouri Revised Statutes the state parks are organized and under the control of the Missouri State Park Board. The Missouri Park Board may make and promulgate necessary and reasonable rules for the proper maintenance, improvement, acquisition and preservation of all state parks. Section 253.035, RSMo 1969. A "park" is defined under Section 253.010, RSMo 1969, as any land, site or object primarily of recreational value or of cultural value because of its scenic, historic, prehistoric, archeologic, scientific, or other distinctive characteristics or natural features.

Under Section 253.080, RSMo 1969, the Park Board has the authority to contract for the management of concessions, privileges, facilities, and conveniences within parks under the conditions and in the manner prescribed by that section. Thus although certain enterprises of a private and non-public nature may be conducted on park premises under contract without conflicting with the provisions of the Missouri Constitution, Section 38(a) of Article III, which prohibits the granting of public funds or property for private purposes, our attention in this area is directed to the question of the use of public grounds or facilities without charge, for purely religious purposes.

Constitutional prohibitions against the support of religion are contained in several sections of the Missouri Constitution.

Section 6, Article I, states:

"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."

Mr. Joseph Jaeger, Jr.

Section 7, Article I, states:

"That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination or 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."

Section 8, Article IX, states:

"Neither the general assembly, nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose, or to help to support or sustain any private or public school, academy, seminary, college, university, or other institution of learning controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any county, city, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever."

Thus we have an explicit interdiction against the use of public funds or public property directly or indirectly in aid of any church, sect or religion. Berghorn v. Reorganized School Dist. No. 8, 364 Mo. 121, 260 S.W.2d 573 (1953), McVey v. Hawkins, 364 Mo. 44, 258 S.W.2d 927 (1953), Harfst v. Hoegen 349 Mo. 808, 163 S.W.2d 609 (1942).

And, it has been said in defining "religious worship" that "denomination, place or mode of worship is not essential, for the open fields, the woods, or the house erected for public worship are alike within its terms, and as long as it is religious worship it makes no difference whether the worshipers are Christians or pagan idolators". 76 C.J.S. Religious, p. 729.

Mr. Joseph Jaeger, Jr.

We further note that recently in the case of Tilton v. Richardson, 29 L.Ed.2d 790 (1971) the Supreme Court of the United States in considering the effect of an act of Congress which permitted the religious use of premises obtained by federal grant after the expiration of twenty years held that the conversion of the premises to religious use or to promote religious interests would have the effect of advancing religion and thus trespassed on the religion clauses of the United States Constitution.

In our view it follows in the premises that the Missouri State Park Board does not have authority to allow organized religious services on a gratuitous regular basis in public use facilities, including land and buildings, on areas owned or controlled by the Board.

Very truly yours,

JOHN C. DANFORTH
Attorney General