

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

September 8, 2017

SENT VIA FAX & U.S. MAIL
(417) 781-1552

Steve Hays
City Attorney
City of Neosho
622 S. Main
Joplin, MO 64801

Re: Transfer of Cross on Public Property to Save Our Heritage Foundation and Open
Records Request

Dear Mr. Hays:

Thank you for your letter yesterday indicating the City of Neosho is transferring the land containing the cross to the private organization, Save Our Heritage Foundation. We are pleased the City is moving in the right direction, but there are serious issues with these type of land transfers and we write regarding outstanding concerns over this remedy.

First, we trust the sale will follow relevant state law, and that the process will be fair, open, and not simply an attempt to sell to a buyer intent on “saving” the religious display. If the intent is to save the religious display, the purpose of the transfer is religious and could be considered a legally problematic sham remedy.

Second, the land on which the cross sits will have to have an enclosure and disclaimer signage because, after the sale, the City must still ensure that there is no “appearance” of a religious endorsement. For instance, the City of Marshfield tried a land transfer to save a fifteen-foot marble statue of Jesus Christ, displayed with His arms open in prayer and the phrase, “Christ guide us on our way,” after FFRF filed a lawsuit. *See FFRF v. City of Marshfield, Wis.*, 203 F.3d 487 (7th Cir. 2000). The Court only upheld the transfer on the understanding:

The inability to distinguish between City park and [private] property affects both the [private] property’s status as a public forum and the perceived endorsement of religion. Therefore, should the City (on City property) construct some defining structure, such as a permanent gated fence or wall, to separate City property from Fund property accompanied by a clearly visible disclaimer, on City property.

Id. at 497.

Indeed, without the fences and disclaimers, the transfer “does not relieve the continued perception of government endorsement.” *Id.* In short, Neosho will still have to ensure that the cross’s “positioning and orientation” do not “combine with the other physical features to convey the impression that the statue is on city park property.” *Id. at 495.*

Third, the City must ensure that it is getting a fair market price for this prime real estate. Neosho must do all it can to avoid the “typical sort of improprieties that might cause [a court] to disregard a transaction.” *Id. at 492.* Avoiding improprieties includes complying with laws governing a land sale, not selling to a straw man for the city, and not selling at below fair market value to a religious organization. *Id.*

Finally, in order to determine whether this transfer fully resolves the constitutional violation, pursuant to the *Missouri Sunshine Law*, Chapter 610, Revised Statutes of Missouri, I request the following records:

1. Copies of communications between the Save Our Heritage Foundation and the City of Neosho regarding the proposed purchase or transfer of land on which the cross structure sits, including the letter from the Save Our Heritage Foundation to the city offering to purchase the land;
2. Copies of any city code, ordinance, policy or other regulation that outlines the process by which the city must follow to sell property, including real estate; and
3. Copies of all other records related to the proposal to sell or transfer the land on which the cross sits, including emails.

If any of these records are available through electronic media, they may be e-mailed to rmarkert@ffrf.org. If I can provide any clarification that will help expedite your attention to my request, please contact me at 608-256-8900.

Thank you in advance for your continued time and attention to this matter.

Sincerely,



Rebecca S. Markert
Legal Director