

# FREEDOM FROM RELIGION *foundation*

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February 10, 2016

**SENT VIA EMAIL AND U.S. MAIL:**  
**legalassistant@cityofmenominee.net**

Mr. Robert J. Jamo, Esq.  
City Attorney  
c/o Jacqueline M. Gasser  
2511 10th Street  
Menominee, MI 49858

Re: Marina nativity scene

Dear Mr. Jamo:

I am writing on behalf of the Freedom From Religion Foundation, a Wisconsin-based national nonprofit organization dedicated to protecting the constitutional principle of separation between state and church.

We have written to the City of Menominee several times over the last nine years regarding a large nativity display that is erected in the City's bandshell every year. On December 11, 2015, we requested records concerning the display. That record request included copies of our 2011 and 2013 letters, which discussed relevant Supreme Court precedent. Please let me know if you do not have copies of those letters.

We received the City's 2009 policy for holiday displays on City-owned property, which states that religious symbols may be included in holiday displays "when a passive religious symbol does not expressly endorse religion, when it is incorporated as part of a larger display containing secular symbols or words, and when it provides an acknowledgement or depiction of the historic origins of a government holiday."

We received no records in response to our request for copies of an agreement between the City and any private organization sponsoring the display in the bandshell. The policy encourages private citizens to place holiday displays on non-City property, and offers no guidelines for allowing anyone other than City officials to place holiday displays on City property. As such, I assume that City officials place the holiday display, on behalf of the City, pursuant to the 2009 policy. Please inform me if this is incorrect.

If the bandshell nativity scene is indeed erected on behalf of the City, it represents government speech and is unconstitutional for the reasons described in our previous letters.

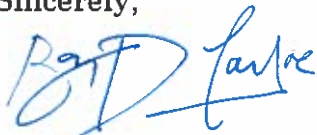
The City's 2009 policy may mislead City officials into thinking the large, lone nativity scene is permissible because the policy purports to allow passive religious symbols that do not "expressly endorse religion" or that show the "historic origins of a government holiday." The Supreme Court has consistently viewed the crèche as an explicitly religious, Christian symbol. *See, e.g., Cnty. of Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573, 600 (1989) (stating that the crèche conveys a religious message of "the Christian praise to God").

Any relation the symbol has to the origins of a government holiday is irrelevant—the City placing this nativity scene endorses the religious aspects of a Christian holiday in defiance of established Supreme Court precedent. A City policy will not shield the City from potential liability for violating the Establishment Clause.

You reportedly advised the City in 2007 that the nativity display "was close to violating the separation of church and state established in the Constitution."<sup>1</sup> After this diplomatic warning nearly ten years ago, it is troubling that the City has apparently not changed its practice.

Please discuss this matter with the appropriate City officials and inform us in writing of the steps the City takes to address these concerns. Our original complainant still lives in the area and is increasingly frustrated with the City's annual endorsement of Christianity, as are we. FFRF prefers to solve these problems through correspondence and education if at all possible, but we will consider our legal options if the City continues to erect a large nativity scene in the City bandshell in the future.

Sincerely,



Ryan D. Jayne, Esq.  
*Diane Uhl Legal Fellow*  
*Freedom From Religion Foundation*

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<sup>1</sup> <http://www.miningjournal.net/page/content.detail/id/501925/Atheists-protest-Nativity-plans.html>.