

# FREEDOM FROM RELIGION *foundation*

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

June 15, 2016

**SENT VIA EMAIL AND U.S. MAIL:**  
**harvey.kennedy@shelbycountyttn.gov**

Mr. Harvey Kennedy  
Chief Administrative Officer  
Shelby County  
160 N. Main, Ste. 1122  
Memphis, TN 38103

Re: Unconstitutional land conveyances

Dear Mr. Kennedy:

I am writing on behalf of the Freedom From Religion Foundation to alert you to unconstitutional land conveyances awarded by Shelby County. FFRF is a national nonprofit organization that works to protect the constitutional principle of separation between state and church. FFRF has nearly 24,000 members across the country, including more than 300 in Tennessee.

A concerned local taxpayer informed us that the Board of County Commissioners for Shelby County has repeatedly conveyed land to churches or other religious organizations for nominal consideration pursuant to Tenn. Code Ann. § 67-5-2509(d)(4) (2016).<sup>1</sup> For example, the County conveyed “eight unimproved parcels of County owned delinquent tax property to Kingdom Fellowship Baptist Church, Inc., a Tennessee Not-For-Profit Corporation, for nominal consideration,” in 2012, and four more parcels were given to the same church in 2015. We understand the County regularly gives land to non-profits in this way, and many of the recipients are churches.

We write to request assurances that the County will not give property to churches or other religious organizations in the future. Shelby County violates both the federal and Tennessee constitutions when it financially supports a church by giving it free property, no less than if it were to simply donate taxpayer funds directly to the church.

The Establishment Clause of the First Amendment prohibits the government from financially supporting churches. *See, e.g., Comm. For Pub. Educ. &*

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<sup>1</sup> This provision allows the County to convey land to a “nonprofit community development corporation,” and does not contemplate conveyances to religious institutions specifically.

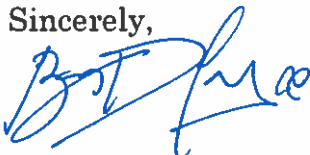
*Religious Liberty v. Nyquist*, 413 U.S. 756, 778–79 (1973) (striking down government-subsidized maintenance and repair of nonpublic schools); *Lemon v. Kurtzman*, 403 U.S. 602, 625 (1971) (holding that government aid to nonpublic education impermissibly entangled the government with religion, even when limited to secular subjects); *Wirtz v. City of S. Bend*, 813 F.Supp.2d 1051, 1068 (N.D. Ind., 2011) (“A well-informed and reasonable nonadherent would see the below-market transfer as a direct endorsement of a particular religion.”). Shelby County may not give property to a church for less than fair market value, donating valuable real estate directly to the church.

The Tennessee Constitution also prohibits the County from financially assisting churches. The Supreme Court of Tennessee has held that Article I, Section 3 of the state constitution provides a “substantially stronger guaranty of religious freedoms” than the federal Establishment Clause. *State ex rel. Swann v. Pack*, 527 S.W.2d 99, 107 (1975). That provision states that “no man can of right be compelled to . . . support any place of worship, or maintain any minister against his consent . . . [and] no preference shall ever be given, by law, to any religious establishment or mode of worship .” Tenn. Const. art. I, § 3. When the County conveys government property to a church, it unconstitutionally compels taxpayers to support that church and shows the County’s preference for that church’s religious message.

County property should never be transferred to religious institutions for less than fair market value. Once the government enters into the religion business, conferring endorsement and preference for one religion over others, it strikes a blow at religious liberty, forcing taxpayers of all faiths and of no religion to support a particular expression of worship. To avoid this problem in the future, Shelby County should not provide grants to any religious organizations pursuant to Tenn. Code Ann. § 67-5-2509(d)(4).

We request a written response with assurances that this unconstitutional practice will not continue, so that we may notify our local complainant that this matter has been resolved. Thank you in advance for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan D. Jayne".

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