

FREEDOM FROM RELIGION *foundation*

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

November 16, 2016

Sent via mail & email to rep.tittl@legiswisconsin.gov

Representative Paul Tittl
State Capitol
PO Box 8953
Madison, WI 53708

Re: Bible studies in state capitol – legal and constitutional problems

Dear Representative Tittl:

I am writing to address the weekly bible studies you are hosting in the Wisconsin State Capitol. The Freedom From Religion Foundation is a national nonprofit based in Madison with nearly 24,000 members nationally and more than 1,300 Wisconsin members. We work to keep state and church separate.

It is our understanding that you host bible studies in your state office every Wednesday morning from 8:00-9:00 a.m. We understand that these are for legislators and their staff members and that you claim they are ecumenical.

As you know, FFRF sent a public records request in January of 2014 to obtain a copy of emails you sent in promoting the bible studies. When FFRF requested the emails you sent from your state email account to every Senate and Assembly email account, including staffers, you denied the request. The stated reason for the denial was that “the content is not related to any official act as a State Representative or to official government business.” *See attached*. In other words, the emails had nothing to do with state work.

At the time, we did not agree because the email went out not only to your fellow legislators, but also to all legislative staff and was sent using your official title. FFRF was able to obtain a copy of the email. It read:

From: Tittl, Paul
Sent: Tuesday, January 14, 2014 2:03 PM
To: *Legislative All Assembly; *Legislative All Senate
Subject: Bible Study Wed morn 8 AM

As the new year starts how about a new start with God
I started a Bible study in Jan of 2013 on wed mornings
We resume tomorrow at 8 Am in 18 North my office and every Wednesday while we are
in session until May 2014
Please consider coming

Hope to see you there
Paul
Paul R. Tittl
Representative District 25
Wisconsin State Assembly
Madison Toll Free 1-888-529-0025
2229 Rheaume Road
Manitowoc Wi 54220

As you must be aware, the Wisconsin State Capitol is state property, not your personal property. Admin. Code. 2.02(1)(a). As such, it is regulated by specific rules, including the rule that the Capitol “shall be used by state employees for the purpose of state work.” Admin. Code. 2.13(1).

Given that you have already admitted that the bible studies are not state work—“not related to any official act as a State Representative or to official government business”—it is incumbent on you to stop the bible studies or move them off state property. There are several churches within a few blocks of that Capitol that we are confident would be willing to host your religious event.

If, on the other hand, you now wish to alter your argument and claim that these bible studies are in fact state work, that raises serious constitutional concerns.

First, this presents serious issues under the Wisconsin Constitution because the state is paying employees and legislators to engage in religious activities and because some employees may feel coerced to attend:

[N]or shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

Wis. Const. art. I, § 18. It has long been held that the state cannot pay for religious instruction or promotion: “Religious instruction in the common schools is **as clearly prohibited by these general clauses of the constitution as religious instruction or worship in any other department of state supported by the revenues derived from taxation.**” *State ex rel. Weiss v. Dist. Bd. of Sch. Dist. No. 8 of City of Edgerton*, 76 Wis. 177, 44 N.W. 967, 981 (1890) (emphasis added).

If the first clause of art. I, § 18 — the “right of every person to worship Almighty God according to the dictates of conscience” — may seem to you to justify your prayers on the public dime, it does not. In your state office acting as a state representative, you are the government. You are an official and you cannot use your office to promote religion. “[T]he free exercise of religion includes the right to profess one’s faith, but it does not include the right to engage in religious conduct, such as proselytizing . . .” *Lange v. Lange*, 175 Wis. 2d 373, 384 (Ct. App. 1993). If you want to host a bible study, you are free to do so. But you are not allowed to use your government office to promote your personal religion.

This also raises concerns under the U.S. Constitution. Government employees acting in their official capacities may not proselytize or promote religion. *See Milwaukee Deputy Sheriff's Ass'n v. Clarke*, 588 F.3d 523 (7th Cir. 2009). In the case, the Seventh Circuit, which controls Wisconsin, ruled that religious presentations at government-organized conferences violated the First Amendment. Milwaukee County Sheriff David Clarke hosted a department wide conference and several departmental meetings and allowed a religious group to speak at each.

The Seventh Circuit noted that even “[t]he *appearance* of endorsement of religion alone can send a message to nonadherents that they are outsiders, ... and an accompanying message to adherents that they are insiders.” *Id.* at 528 (quotation omitted). This was also an issue because the sheriff “took no steps to disentangle himself or the Department from any of the religious messages.” *Id.* at 529. In short, the problem was that a government official was abusing his position to promote religion.

Here, the problem is exacerbated because you are not just inviting a religious organization to promote religion, but are actually promoting religion yourself. Attendance by staff members may not be officially mandatory, but for those employed in your office it may be unavoidable, despite the early hour.

As a state legislator, you serve a population that consists of not only bible believers, but also atheists, agnostics, Muslims, and Hindus among others. When you use your state office to conduct a bible study, you send an official message of endorsement of religion over non-religion and Christianity over all other religions to the exclusion of the nearly one in four U.S. adults who are nonreligious.¹

Please stop hosting bible studies in your office and instead concentrate on state business. Our message to pious politicians is: Get off your knees and get to work. The answers will not come from above. Nothing fails like prayer. Please inform us in writing of the actions that you are taking to address this issue.

Very truly,



Annie Laurie Gaylor
Co-President

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¹ *America's Changing Religious Landscape*, Pew Research Center (May 12, 2015) available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.



PAUL TITTL

STATE REPRESENTATIVE • 25TH ASSEMBLY DISTRICT

March 12, 2014

Patrick C. Elliott
Freedom From Religion Foundation
P.O. Box 750
Madison, WI 53701

Dear Mr. Elliott:

This is in response to your public records request dated February 20, 2014, in which you make a request for "all emails sent by you or your legislative staff inviting legislators or their staffers to bible studies."

As a result of your request, I conducted a review and located responsive e-mails. However, I am denying your request. In *Schill v. Wisconsin Rapids School District*, the Wisconsin Supreme Court held that the Wisconsin Public Records Law (Wis. Stat. §§ 19.31 – 19.39) does not require the disclosure of the contents of purely personal e-mails sent on government e-mail accounts, unless they evince a violation of law or policy. 2010 WI 86, ¶ 9 & n.4, 327 Wis. 2d 572, 786 N.W.2d 177, (Abrahamson, C.J., lead opinion); *Id.*, ¶ 148 & n.2 (Bradley, J., concurring); *Id.*, ¶ 173 & n.4 (Gableman, J., concurring). **I have determined that the contents of my e-mails responsive to your request are purely personal, as the content is not related to any official act as a State Representative or to official government business.** Neither do the contents of these personal e-mails evince a violation of law or policy. Therefore, based upon the purpose of the Public Records Law, Wis. Stat. § 19.31 ("all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers"), and the Wisconsin Supreme Court's holding in *Schill*, the personal e-mails I have located will not be released to you.

Pursuant to Wis. Stat. § 19.35(4)(b), this determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to a district attorney or the Attorney General.

Sincerely,

Representative Paul Tittl
25th District