

FREEDOM FROM RELIGION *foundation*

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June 14, 2011

SENT VIA MAIL AND EMAIL

President Derek Dieter and Council Members
South Bend Common Council
227 West Jefferson Blvd, Suite 400
South Bend IN 46601

Re: Proposed Unconstitutional Appropriations to Catholic School

Dear President Dieter and Common Council Members:

I am writing on behalf of concerned citizens and members of the Freedom From Religion Foundation (FFRF), who object to allocating City money for the St. Joseph High School campus. FFRF is a national nonprofit organization with over 16,500 members across the country, including members in South Bend. Our purpose is to protect the constitutional principle of separation between state and church.

Mayor Stephen Luecke has proposed spending \$1.2 million in the capital budget to "assist development of St Joseph High School's new campus." We understand that the funding is including in Bill 27-11, which the Common Council declined to vote on at last night's meeting and will vote on at an upcoming meeting. The \$1.2 million would be used to purchase a Family Dollar store building and property and to compensate the storeowner for a 25-year lease.

We understand that the Mayor's plan includes "gifting" the acquired property to St. Joseph's High School. The school describes itself as a "Catholic secondary school dedicated to transforming students in heart and mind, preparing them to serve God, the Church and the world." School principal Susan Richter recently sent an email to parents and alumni of the school, asking them to lobby the Common Council in support of the City's gift. Her message said,

Part of this current budget proposal includes \$1.2 million to acquire the Family Dollar Store along LaSalle Street and **gifting it to Saint Joseph's High School...** We have been working with the Mayor's office for several months on this aspect of our new school project. If Mayor Luecke's budget is rejected, essentially it will add an additional \$1.2 million to our campaign plus what constructions costs are added to the project due to the delay in acquiring that piece of land. (emphasis added)

Mayor Luecke's plan to publicly subsidize the construction of the St. Joseph's campus violates the U.S. Constitution. The Establishment Clause of the First Amendment prohibits the government from enacting laws that do not have a secular

legislative purpose or that have the primary effect of advancing religion. *See Lemon v. Kurtzman*, 403 U.S. 602 (1971). Spending public funds in direct aid to particular religious institutions is unconstitutional. *See Committee For Public Ed. and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973)(Striking down maintenance and repair grants given to sectarian schools as impermissibly advancing religion); *FFRF v. Bugher*, 249 F.3d 606 (7th Cir. 2001)(Striking down grants to religiously-affiliated schools that subsidized telecommunications access). The City cannot legally subsidize the creation of a religious school campus.

The proposal likewise violates the Indiana Constitution, which provides:

No preference shall be given, by law, to any creed, religious society, or mode of worship; and no person shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent.

No money shall be drawn from the treasury, for the benefit of any religious or theological institution.

Ind. Const. Art. 1, §4, §6.

Mayor Luecke's scheme to assist in building the school is an affront to these provisions of the Indiana Bill of Rights. Apparently, the plan calls for spending income tax revenue from the Economic Development Income Tax Fund to acquire property that the City will then give to a religious school. Thus, these taxpayer funds would be used to directly "benefit" a religious institution. In her email to St. Joseph's alumni and parents, Principal Richter acknowledged the impact that the City's gift would have. She said, "If Mayor Luecke's budget is rejected, essentially it will add an additional \$1.2 million to our campaign." The school reportedly already has more than \$33 million in commitments for funding the construction. The City cannot be tasked with adding an additional \$1.2 million to assist in the fundraising efforts of a religious school.

The Common Council must reject the Mayor's plan to subsidize the construction of the St. Joseph High School campus. The plan violates the Establishment Clause of the U.S. Constitution and Articles 4 and 6 of the Indiana Bill of Rights. We request that the Common Council immediately halt this unconstitutional proposal. May we hear from you as to what steps you are taking to address this important issue?

Sincerely,



Patrick C. Elliott
Staff Attorney