



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

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Mr. Thomas O. Wells
Assistant District Attorney
Ninth Judicial District
P.O. Box 13438
Alexandria, LA 71315

U.S. Const. Amend. 1
La. Const. art. I, § 7
La. Const. art. 11, § 4
La. R.S. 18:1465

The Rapides Parish Library has likely created a public forum by allowing groups to rent out meeting rooms. The Library Board may reasonably restrict use of the meeting rooms, subject to state and federal law. The Library Board may charge a reasonable fee for groups wishing to use the library meeting rooms for political purposes.

Dear Mr. Wells:

On behalf of the Rapides Parish Library Board of Control ("Board"), you have requested an opinion regarding the Rapides Parish Library meeting room policy. You indicate that the library recently amended its meeting room policy; however, after receiving objections from the public about the new policy, the Board decided to suspend enforcement of the new policy pending receipt of an Attorney General's opinion.

The library's old meeting room policy provided that:

Meeting rooms are . . . available to . . . groups of a civic, cultural, charitable, fraternal, social or educational nature. Religious, business, and political groups may use the meeting rooms.

The Board modified the meeting room policy in 2014 to provide as follows:

Meeting rooms are . . . available to . . . groups of a civic, cultural, charitable, fraternal, social, educational, or religious nature. Businesses and groups may use the rooms for non-commercial purposes: staff training, informational presentations on issues of public interest, etc., but not for sales presentations, billable services, club bake sales, etc. Political debates and forums, involving all sides of issues and most or all candidates for an office, are permitted. Clubs and organizations, including political parties that advocate specific issues or agendas, or support specific candidates may not use the meeting rooms.

In your request, you outline four questions for our research and review, which are as follows:

1. Has the Board's old meeting room policy created a public forum?

2. If so, can the Board now restrict usage of library meeting rooms as set forth in the new policy?
3. If the Board cannot restrict usage of library meeting rooms, may it allow the usage but also charge a fee?
4. May the group known as "Patriots of CenLA" use the Library's meeting rooms?

Has the Board's old policy created a public forum?

The United States and Louisiana Constitutions contain provisions guaranteeing the freedom of speech. U.S. Const. Amend. 1; La. Const. art. I, § 7. However, a citizen's right to free speech is not absolute. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571 (1942). The existence of a right of access to public property for the purpose of speaking there and the standard by which limitations on that right must be evaluated differ depending on the character of the property. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983). For example, if government property is not a public forum, the property is subjected to a significantly lower level of judicial scrutiny than government property that is considered a public forum. Forum property is typically categorized in three ways: a traditional public forum, a designated public forum, or a nonpublic forum. *Perry*, 460 U.S. 37, 44-46.

Traditional public forums include places which have been routinely used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. *Hague v. Committee for Indus. Organization*, 307 U.S. 496, 515 (1939). Traditional public forums are defined by the objective characteristics of the property, where the property has been devoted to assembly and debate. *Perry*, 460 U.S. 37, 45.

Designated public forums are areas intentionally created and designated by the government as open for expressive use by the public. *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788, 802 (1985). Designated public forums are not created accidentally, or by inaction, but rather only by intentionally designating the forum for such purposes. *Arkansas Educ. Television Com'n v. Forbes*, 523 U.S. 666, 678, (1998). Permitting limited discourse does not create a designated public forum. *Arkansas*, 523 U.S. 666, 677. The government is not required to establish the designated public forum in the first place and may subsequently decide to prohibit the use of such for public speech purposes. *Id.* We note that the United States Supreme Court has used both "designated public forum" and "limited public forum" to describe the middle category. However, there is no agreement that the terms can be used interchangeably.

Nonpublic forums are places that are only open for selective or occasional rather than indiscriminate use for expression by members of the public. *Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992).

The state's authority to regulate free speech is most limited in the traditional public forum and greatest in the nonpublic forum. The government can exclude a speaker from a traditional public forum "only when the exclusion is necessary to serve a

compelling state interest and the exclusion is narrowly drawn to achieve that interest.” *Cornelius*, 473 U.S. at 800. As it relates to designated or limited forums, if the government excludes a speaker who falls within the class to which a designated public forum is made generally available, its action is subject to strict scrutiny. *United States v. Kokinda*, 497 U.S. 720 (1990). Access to a nonpublic forum can be restricted if the restrictions are reasonable and are not an effort to suppress expression merely because public officials oppose the speaker's views. *Cornelius*, *supra*, at 800.

Because the Board has already opened the meeting rooms at the Rapides Public Library for public discourse to various groups, it is likely that the Board has created a designated public forum in the library meeting rooms. This is consistent with cases where courts have characterized libraries as designated or limited public forums in the past. For example, in the case of *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242 (3d Cir. 1992), the court stated, “[i]n our view, an application of the Supreme Court's declarations concerning this issue, as well as an examination of the factual similarities and dissimilarities among the cases discussed above and the present one, confirm that the Library constitutes a limited public forum, a type of designated public fora.” *Id.* at 1259. The court further provided:

[A] limited public forum “is created when government opens a nonpublic forum but limits the expressive activity to certain kinds of speakers or to the discussion of certain subjects.... In the case of a limited public forum, constitutional protection is afforded only to expressive activity of a *genre similar to those that government has admitted to the limited forum*.” *Id.* at 692 (emphasis supplied). Hence, as a limited public forum, the Library is obligated only to permit the public to exercise rights that are consistent with the nature of the Library and consistent with the government's intent in designating the Library as a public forum. Other activities need not be tolerated.

Kreimer at 1261. Based on the above analysis, the library may be considered a designated public forum. It is therefore subject to all the legal restrictions associated with a designated public forum.

If considered a public forum, can the Board now restrict usage as set forth in the new policy?

When government property has by law or tradition been given the status of a public forum, the right to limit protected expressive activity is circumscribed by the First Amendment to the United States Constitution. *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753 (1995).¹ The regulation of a “limited public forum” was discussed in *Good News Club et al v. Milford Central School*, 533 U.S. 98 (2001), which stated a state establishing such a forum is not required to and does not allow persons to

¹ The First Amendment applies to state and local governments through the Fourteenth Amendment.

engage in every type of speech. It may be justified in reserving its forum for certain groups or the discussion of certain topics. See e.g., *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829. Additionally, the Supreme Court has held that the power to so restrict speech, however, is not without limits. The restriction must not discriminate against speech based on viewpoint and must be reasonable in light of the forum's purpose. *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 806.

As noted in *Good News Club*, regulations of limited public forums were also discussed by the Supreme Court in *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 829 (1995), which states:

Once it has opened a limited forum, however, the State must respect the lawful boundaries it has itself set. The State may not exclude speech where its distinction is not "reasonable in light of the purpose served by the forum," *Cornelius*, supra, at 804–806, 105 S.Ct. at 3450–51; see also *Perry Ed. Assn.*, supra, at 46, 49, 103 S.Ct., at 955, 957, nor may it discriminate against speech on the basis of its viewpoint, *Lamb's Chapel*, supra, at 392–393, 113 S.Ct., at 2147; see also *Perry Ed. Assn.*, supra, at 46, 103 S.Ct., at 955; *R.A.V.*, supra, at 386–388, 391–393, 112 S.Ct., at 2544–2546, 2547–2549; cf. *Texas v. Johnson*, 491 U.S. 397, 414–415, 109 S.Ct. 2533, 2545, 105 L.Ed.2d 342 (1989). Thus, in determining whether the State is acting to preserve the limits of the forum it has created so that the exclusion of a class of speech is legitimate, we have observed a distinction between, on the one hand, content discrimination, which may be permissible if it preserves the purposes of that limited forum, and, on the other hand, viewpoint discrimination, which is presumed impermissible when directed against speech otherwise within the forum's limitations. See *Perry Ed. Assn.*, supra, at 46, 103 S.Ct., at 955.

The Supreme Court was careful to distinguish between content discrimination and viewpoint discrimination. The *Rosenberger* court ruled content discrimination would be permissible in order to preserve the purpose of the limited public forum. *Id.* at 820. Therefore, certain types of speech can be prohibited in a library in order to maintain the peaceful atmosphere required to preserve the purpose of the library. The Board must regulate only the content of speech to the extent it preserves the purposes of the library.

The Board may not regulate speech dependent on the viewpoint of the speaker. Viewpoint discrimination is not permissible according to the rulings of the Supreme Court discussed above.

While the library may not pick and choose what viewpoints are allowed by engaging in viewpoint discrimination, the library may place reasonable restrictions on the speech such as time, place, and manner regulations. *Concerned Women for America v. Lafayette County*, 883 F.2d 32 (5th Cir. 1989). For example, the library cannot forbid

members of a political group to use the library based on the group's political point of view, but they may restrict the timing of the room rental to certain hours of the day. Such restrictions would be in agreement with federal and state law.

As stated in *Kokinda*, the Board's regulation of speech is subject to a strict scrutiny standard because the library can be considered a designated public forum. *Kokinda*, 497 U.S. at 726. Therefore, according to the standards of strict scrutiny, the Board must have a compelling state interest and the regulation must be narrowly tailored to achieve that interest. *Cornelius* at 3447. The most significant change in the Board's policy is not allowing groups that advocate specific political issues to use the meeting rooms. Absent a compelling interest, the Board may not prohibit such groups from using the meeting rooms. Our office cannot serve as a fact finder, but we note that banning groups as a whole could possibly result in impermissible viewpoint discrimination.

If the Board cannot restrict usage as set for in the new policy, may it allow the usage but also charge a fee?

As we have noted in numerous prior opinions, political activity is allowed in public buildings when a sufficient fee for the building's use is charged and paid for with private funds.² On the contrary, if no fee is charged for use of a public building, then public funds would be used, which would be considered a violation of La. R.S. 18:1465(A). *Id.*

The Board may charge a fee for usage of a meeting room. Further, Louisiana law mandates that a fee be charged when using a room for political purposes. Specifically, La. Const. art. 11, § 4 and La. R.S. 18:1465(A) both prohibit public money from being used for political purposes.

La. Const. art. 11, § 4 states:

No public funds shall be used to urge any elector to vote for or against any candidate or proposition, or be appropriated to a candidate or political organization. This provision shall not prohibit the use of public funds for dissemination of factual information relative to a proposition appearing on an election ballot.

La. R.S. 18:1465 states:

A. No public funds shall be used to urge any elector to vote for or against any candidate or proposition, or be appropriated to a candidate or political organization. This provision shall not prohibit the use of public funds for dissemination of factual information relative to a proposition appearing on an election ballot.

² See La. Atty. Gen. Op. Nos. 91-216, 02-297, and 11-0195.

B. Whoever violates any provision of this Section shall be fined not more than one thousand dollars or be imprisoned, with or without hard labor, for not more than two years, or both.

While these provisions are nearly identical, the statute prohibiting public funds for political activity includes a penalty allowing both a fine and imprisonment for violation of its terms.

Our office summarized these provisions in a similar request in La. Atty. Gen. Op. No. 11-0195. There, the key issue was whether a library could accept payment for the use of a room. Our office concluded that when there is no charge to use a room in a public facility such as a library, there are restrictions on how the room can be used. Our office also concluded that a library could let private groups use library space for free, but such free use would come with restrictions, such as not allowing the space to be used for political purposes.³

Therefore, the Board may charge a fee for usage of a meeting room, and may be required to charge a private group wishing to use the library's meeting rooms for political purposes. A fee does not need to be charged for groups distributing purely factual information for upcoming elections.

May the group known as "Patriots of CenLA" use the Library's Meeting Rooms?

Consistent with the above analysis, groups like Patriots of CenLA may use the room without paying a fee. However, they would be limited to distributing factual information and would be prohibited from supporting or opposing political candidates or propositions. As long as their purpose is simply to meet and provide the public with information, they may meet in the room free of charge.

This analysis does change if the group is charged a fee. If the Board were to charge the group a fee for the use of a public facility, the group may then be able to advocate for or against political candidates or propositions. Such a fee would prohibit the Board from using "donated" public funds for political activity, because by charging a fee, the funds used would not be donated from a public entity.

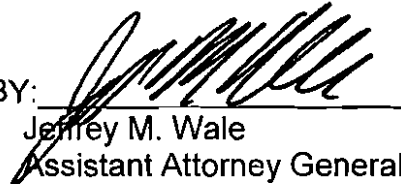
In summary, the library may allow any group to use the library for free for a solely factual or informational purpose. The library may also allow groups to use the rooms for political activity, but such groups must pay a reasonable fee. Time, place, and manner restrictions may also be placed on speech as it relates to political activity, but these restrictions must be reasonable, in accordance with the confines of the strict scrutiny analysis.

³ La. Atty. Gen. Op. No. 11-0195.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: 
Jeffrey M. Wale
Assistant Attorney General

JDC: JMW