



JOE E. MILNER
DIRECTOR

JAMES R. WILSON
ASST. DIRECTOR

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N. LAMAR BLVD.-BOX 4087-AUSTIN, TEXAS 78773-0001
512/465-2000



COMMISSION
ROBERT B. HOLT
CHAIRMAN

CALVIN R. GUEST
ALBERT B. ALKEK
COMMISSIONERS

ID# 12171

MS

RQ-68

April 3, 1991

RECEIVED

APR 11 91

Opinion Committee

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
Austin, Texas

Attn: Opinions Committee

Dear General Morales:

The Department has received a request from the Texas Krishnas, a part of the International Society for Krishna Consciousness to obtain "clarification of the parameters within which our religious organization's volunteers can from time to time distribute religious literatures (not selling) and receive donations" on DPS property.

Initially, this seemed an innocuous enough request inasmuch as the conduct engaged in appears to be protected by the First Amendment of the United States Constitution, as it relates to freedom of speech. However, upon review of the request, our attention was drawn to Section 88 of the current Appropriations Act, which provides essentially that state property cannot be used for a private purpose. This particular section gave us some concern regarding whether or not it was proper purpose for state property to be used for private solicitations. In making a quick review of our own recollections, we do not recall a situation wherein state property was utilized for a purpose such as that contemplated by the Krishnas.

Also, recent United States Supreme Court and U.S. Courts of Appeals cases regarding limitations on solicitations of various kinds and character came to mind. Those cases severely limited, and in some cases prohibited, the solicitations that were ongoing. Taken together, these factors caused us to have some concern about the legal correctness and propriety of allowing solicitations such as those that are contemplated, to occur. [See United States v. Kokinda, 110 S.Ct. 3115 (1990); International Society for Krishna Consciousness v. Lee, 925 F.2d 576 (2nd Cir. 1991); Paulsen v. County of Nassau, 925 F.2d 65 (2nd Cir. 1991); Young v. New York City Transit Authority, 903 F.2d 146 (2nd Cir. 1990), U.S. App. Pndg.; Carew-Reid v. Metropolitan Transp. Authority, 903 F.2d 914 (2nd Cir. 1990).] Obviously, the Krishnas Society believes that they are entitled to engage in these activities.

The Honorable Dan Morales

Page 2

April 3, 1991

We seek your opinion, advise, and counsel with regard to whether or not it is appropriate for the Department to permit the named individuals to solicit and distribute literature and receive donations on its state-owned property. If the answer to that question is yes, then may the Department prescribe the manner, the time, the place, and duration of the solicitations and distributions that are contemplated by this group of individuals.

Given the concern that all of us have towards making the best use of state property for the benefit of the taxpayers of our state and the citizens whom we serve, while at the same time adhering to all appropriate laws, we are concerned that the course of action we chart be the correct one. We solicit your guidance and opinion with regard to these matters and await your comments prior to taking any further action. Significant care and thought has gone into the position the Department has taken with regard to these matters and we do not take this request lightly. We trust that your response will give us the guidance necessary to resolve this matter to the satisfaction of all concerned.

Thank you for your cooperation regarding the issues of this matter. If you have any problems regarding this request, please contact John C. West, Jr., Chief of Legal Services Division, Texas Department of Public Safety, at the letterhead address or at 512/465-2250.

Sincerely,



Joe E. Milner
Director

JEM:JWw