

CITY OF MILWAUKEE

Form CA-43

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
Deputy City Attorney

THOMAS E. HAYES
PATRICK B. McDONNELL
CHARLES R. THEIS
Special Deputy City Attorneys



OFFICE OF CITY ATTORNEY
800 CITY HALL
200 EAST WELLS STREET
MILWAUKEE, WISCONSIN 53202-3551
TELEPHONE (414) 286-2601
TDD 286-2025
FAX (414) 286-8550

May 26, 2000

BEVERLY A. TEMPLE
THOMAS O. GARTNER
LUNDA ULISS BURKE
BRUCE D. SCHRAMPF
ROXANE L. CRAYFORD
SUSAN D. BICKERT
HAZEL MOSLEY
HARRY A. STEIN
STUART S. MUKAMAL
THOMAS J. BEANISH
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MICHAEL G. TOBIN
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PATRICIA A. FRICKER
HEIDI WICK SPOERL
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EDWARD M. EHRlich
CHRISTOPHER J. CHERELLA
LEONARD A. TOKUS
MIRIAM R. HORWITZ
MARYNELL REGAN

Assistant City Attorney

Mr. Ronald Leonhardt, City Clerk
City Clerk's Office
Room 205, City Hall

Re: Invocation at Common Council Meetings

Dear Mr. Leonhardt:

By letter dated May 18, 2000, you requested the opinion of this office as to whether the Common Council may begin its meetings with an invocation. In the proposal you present, the Common Council President would invite ministers of various faiths.

In our opinion, such a practice is legal under the United States and Wisconsin Constitutions.

The United States Supreme Court addressed this issue in the seminal case of *Marsh v. Chambers*, 463 U.S. 783, 193 S.Ct. 3330, 77 L.Ed. 2d 1019 (1983). In that case, the Nebraska legislature began its sessions with a prayer by a publicly paid Presbyterian minister who had served in that capacity for almost 20 years. The Supreme Court upheld the practice, stating that prayers before legislative sessions are deeply embedded in the history and traditions of the United States. While history alone wouldn't justify a current constitutional violation, the Supreme Court explained that the drafters of the First Amendment themselves paid a clergyman to conduct prayers before their sessions. Therefore, the drafters could not have intended the Establishment Clause to exclude such invocations.

The Supreme Court found that prayers before legislative sessions have become part of the national fabric, and are a tolerable acknowledgement of beliefs widely held among the people. The Supreme Court approved the Nebraska prayer, even by a single, paid clergyman, as long as there was no impermissible motive to advance the beliefs of one denomination, and no indication that the prayer opportunity has been exploited to proselytize or advance one religion or disparage another religion. These are important precepts that should be honored by the Common Council and the religious representatives it invites.

May 26, 2000

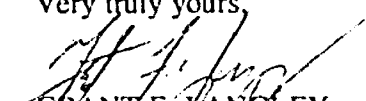
In a later opinion, the United States Supreme Court pointed out the differences between a prayer before legislative sessions and a prayer at a school graduation. "The atmosphere at the opening of a session of a state legislature where adults are free to enter and leave with little comment and for any number of reasons cannot compare with the constraining potential of the one school event most important for the student to attend. ... The Marsh majority in fact gave specific recognition to this distinction and placed particular reliance on it in upholding the prayers at issue there." *Lee v. Weisman*, 505 U.S. 577, 597, 112 S.Ct. 2649, 120 L.Ed. 2d 467 (1992).

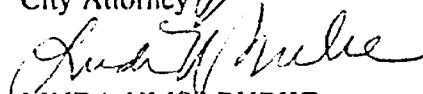
In a more recent case, the 10th Circuit Court of Appeals wrote: "We are obliged, therefore, to read Marsh as establishing the constitutional principle that the genre of government religious activity that has come down to us over 200 years of history and which we now call 'legislative prayer' does not violate the Establishment Clause." *Snyder v. Murray City Corporation*, 159 F.3d 1227, 1233 (10th Cir. 1998).

The Wisconsin Constitution, while also containing an establishment clause, recognizes and accepts the idea of God in its preamble. The courts of this state interpret and apply the establishment clause of the Wisconsin Constitution in light of United States Supreme Court cases interpreting the Establishment Clause of the United States Constitution. *See, King v. Village of Wauwakee*, 185 Wis. 2d 25, 54-55, 517 N.W.2d 671, 683-684 (1994).

Therefore, we conclude that the United States Supreme Court has carved out a type of prayer, despite its usual scrutiny of government endorsement of religion, that is defined as "legislative prayer," and has approved of religious invocations at legislative sessions.

Very truly yours,


GRANT F. LANGLEY
City Attorney


LINDA ULISS BURKE
Assistant City Attorney

LUB:bal

c: Ald. Marvin E. Pratt
Ms. Carolyn Hill Robertson
Mr. Anthony Zielinski

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