



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 4, 1995

Mr. Rufus P. Cormier
Chair
Texas Southern University
Board of Regents
3100 Cleburne Avenue
Houston, Texas 77004

Letter Opinion No. 95-031

Re: Propriety of a state university allowing a
religious group to use its facilities (ID# 30282)

Dear Mr. Cormier:

You ask about the "propriety of a state university allowing a religious group to use its facilities to host a program." You attach to your request what appears to be a standard "Request for Space" form submitted to Texas Southern University by the Christian Men's Network (the "Network"), and a letter to the university from the Network stating that the proposed "all day men's conference will be addressing topics pertaining to men's responsibilities as fathers, husbands, leaders, and godly relationships, we would not exclude women We encourage young men 13 years and older to come and start learning their responsibilities as young men and how to treat young ladies. The topics taught to the men benefit the women."

You do not raise any particular legal concerns about the use of campus facilities for the Network's proposed conference. We therefore limit ourselves here to consideration of First Amendment limitations, on establishment of religion and restriction of free expression, which are applicable to state entities via the Fourteenth Amendment to the federal constitution. *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 113 S. Ct. 2141, 2144 (1993). In our opinion, the university here may not invoke the Establishment Clause as a basis for denying access to facilities otherwise available. Rather, denying such access solely on the basis of religious content would run afoul of First Amendment speech protections.

Widmar v. Vincent, 454 U.S. 263 (1981), demonstrates the interaction of speech and establishment principles in the supreme court's treatment of a campus religious group's challenge to a state university's policy excluding religious groups from the campus's "open forum" programs. The court noted that "[a]n open forum in a public university does not confer any imprimatur of state approval on religious sects or practices" where "the forum is available to a broad class of nonreligious as well as religious speakers." While a state university may impose reasonable "time, place, and manner regulations" and may "exclude even First Amendment activities that violate reasonable campus rules or substantially interfere with the opportunity of students to obtain an education," an exclusionary policy based solely on religious content "violates the

fundamental principle that a state regulation of speech should be content-neutral.” *Widmar* 454 U.S. at 274-78.

Again, *Widmar* dealt with a university’s regulation of activities by campus groups. Notably, the court there did stress that while they considered a state university somewhat as they would a traditional or designated public forum for purposes of *student* activities, university facilities are not public fora for purposes of expression by the public at large. *Widmar*, 454 U.S. at 273 n.5 (and authorities cited there).¹ A more recent supreme court case, *Lamb’s Chapel*, indicates, however, that once public educational facilities *are* made available to outside groups, even for limited purposes, speech for purposes consistent with those allowed cannot be excluded solely because of religious content. In *Lamb’s Chapel*, although a school district made district facilities available to outside groups for “social, civic, and recreational” purposes, it had refused a church’s request to use school facilities to present a religious-oriented film, on “family and child rearing issues,” solely because of the film’s religious orientation. 113 S.Ct. at 2144-45. The court held that if the district made district facilities generally available for presentations of views on family issues, it could not deny access to those expressing views on such subjects solely because they did so from a religious point of view. *Id.* at 2142-48.

Here, you have not provided details in your request as to the policy of the university here *vis-à-vis* its regulation of public access to campus facilities. Assuming however that the university allows public access to a broad class of university and nonuniversity groups, but does not favor, sponsor, or lend its imprimatur to particular viewpoints beyond the allowance of access, it is our opinion based on the facts presented that allowing access to the Network would not violate the establishment clause, and, further, that denial of access, if done solely on the basis of the Network’s religious affiliations, would violate First Amendment speech protections.

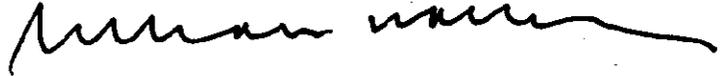
S U M M A R Y

If a state university allows a broad class of groups access to university facilities, but does not favor, sponsor, or lend its imprimatur to particular viewpoints beyond the allowance of access, allowing access to a religiously-oriented organization would not

¹See generally Attorney General Opinion DM-64 (1991) for a discussion of the three types of fora the courts have distinguished in their analyses of speech rights on public property. The custodian of a “traditional” or “designated” public forum “may enforce ‘reasonable time, place, and manner regulations’ [of speech]” there “as long as the restrictions ‘are content-neutral, are narrowly tailored to serve [a] significant governmental interest, and leave open ample alternative channels of communication,’” (citing *United States v. Grace* 461 U.S. 171 (1983) at 177). A nonpublic forum may be reserved . . . “for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view,” (citing *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46 (1983)).

violate the Establishment Clause of the First Amendment. Furthermore, denial of access in such context, if done solely on the basis of the organization's religious orientation, would violate First Amendment speech protections.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", with a long horizontal flourish extending to the right.

William Walker
Assistant Attorney General
Opinion Committee