



OFFICE OF  
CITY ATTORNEY



# THE CITY OF SAN DIEGO

SAN DIEGO, CALIFORNIA

February 23, 1949.

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Honorable Harley E. Knox,  
Mayor  
The City of San Diego,  
California.

Dear Sir:

The letter from the Second Church of Christ, Scientist, stating that the Director of Balboa Park is refusing them permission to give a Christian Science lecture in the Balboa Park (Ford) Bowl, raises the question whether a religious sect or church may be given permission to use park property for religious or sectarian purposes.

Section 55 of the Charter of the City of San Diego states that "All real property . . . designated . . . for park recreation . . . purposes shall not be used for any but park, recreation . . . purposes . . . "

This section further provides that -

"Whenever the Council deems it to be for the best interests of the City, the Council may authorize the City Manager to enter into leases or contracts . . . upon such terms and conditions as the Council shall prescribe for the use and operation of city-owned equipment and facilities of a recreational, cultural or educational character . . . "

Pursuant to this authority the Council has adopted a series of Resolutions No. 92207 and 92208, setting forth the terms and conditions under which the City Manager and his Director of Parks and Recreation shall let the use and operation of the facilities located in the Park for recreational, cultural or educational activities.

Nowhere, either in the Charter of the City of San Diego, or in any of the resolutions adopted above by the Council of The City of San Diego is there express or implied permission given to allow park property to be used for religious, sectarian purposes.

This omission is necessarily so because Article IV, Section 30 of the Constitution of the State of California states that -

"Neither the Legislature, nor any County . . . . or municipal corporation shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed or sectarian purpose, or help to support or sustain any school, college, university . . . or other institution controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or . . . other municipal corporation for any religious creed, church or sectarian purpose whatever. . . . "

This Article IV, section 30, of the Constitution of the State of California is in accord with and was enacted to comply with Amendment I of the United States Constitution that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . ." which prohibition was likewise placed on the States by Amendment XIV of the United States Constitution.

Therefore, it is our opinion that The City of San Diego is prohibited from granting anything in aid of any religious sect, church, creed or sectarian purpose. The granting of a permit or lease to the Second Church of Christ, Scientist for the use of Balboa Park Bowl to give a Christian Science lecture (regardless of the payment of any rental fee) would be an assistance to this religious group in the teachings of their particular religion. This does not mean that this religious group is barred from those privileges available to others where the activity has no connection with religion and does not result in assisting such group in the teachings of their particular religion.

Insofar as permission was orally granted to allow a Christian Science lecture to be given on May 8, 1949, such per-


Hon. Harley E. Knox, Mayor

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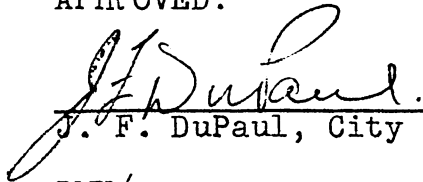
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mission was erroneously granted. This is also true of any permits previously having been granted to any particular religious group or sect.

Respectfully submitted,

  
Louis M. Karp,  
Deputy City Attorney.

APPROVED:

  
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J. F. DuPaul, City Attorney.

LMK/c