June 3, 2019

**BY EMAIL AND US MAIL**

COMPLAINANT

ADDRESS

ADDRESS

Superintendent Curtiss Scholl

Sisters School District

525 East Cascade Ave.

Sisters, OR 97759

Dear COMPLAINANT and Superintendent Scholl,

This letter is the Preliminary Order on the May 2, 2019, complaint filed by COMPLAIANT (Complainant) alleging that Sisters School District violated ORS 327.109 by sponsoring, financially supporting, or being actively involved with religious activity. The objective of this order is to determine whether there is a substantial basis to find that the district sponsors, financially supports, or is actively involved with religious activity.

## Procedural Background

Complainant filed a complaint with the Oregon Department of Education on May 2, 2019. In his complaint, Complainant alleged that Sisters School District allowed Vast Church to hold services at Sisters High School in violation of ORS 327.109. Complainant also alleged that a religious plaque is affixed to the wall of one of the district’s schools in violation of ORS 327.109.

The department accepted the complaint on May 9, 2019, and launched an investigation. The department specifically asked for documents pertaining to Vast Church’s use of Sisters High School and for a picture of the plaque. The district provided the department with the requested information.

On June 14, 2019, Complainant drew the department’s attention to the fact that the district also allowed Vast Church to hold services at Sisters Elementary School. The department requested the district to provide additional information about Vast Church’s use of that school. The district provided the department with the requested information.

## Findings of Fact

1. There is a plaque affixed to an outer wall of Sisters High School, near an entrance to the school, on which is written the following: “THE KNOWLEDGE OF GOD IS THE BEGINNING OF WISDOM.” The size of the plaque is approximately one foot by one foot.
2. Sisters School Board has adopted a policy for the community use of district facilities. According to the policy:

The Board believes that, while [district facilities] are primarily for the use of the school program, there is a secondary responsibility to the community at large. To this end, the school facilities are available to the community and to groups within the community whenever said use does not conflict with the school program[,] . . . and subject to [certain] . . . criteria.

As written, the criteria does not specifically allow, or prohibit, the use of district facilities by churches or other religious organizations. The criteria applies to all applicants equally. Examples of the criteria include:

Use of school facilities shall be available to groups that represent the entire community or a major fraction thereof, or to any group when the benefits derived accrue to the welfare of the entire community. School facilities may be available for commercial use on a space available basis.

and

 No out-of-school group will begin with its activities until school is dismissed in the afternoon and the students have left the building or the principal has determined that there would be no interference with normal school functions.

1. On January 1, 2014, Sisters School District entered into an agreement with Vast Church, under which the church would use Sisters High School on Sundays for church services. Under the agreement, the church would pay the district $221.40 per day of use to rent the building and $220 per day of use for custodial services. The agreement did not have an end date.
2. On May 3, 2017, the district entered into a new agreement with Vast Church, under which the church would use Sisters High School from 7:15 a.m. to noon on Sundays for church services. Under the agreement, the church would pay the district $221.40 per day of use to rent the building and $220 per day of use for custodial services. The agreement does not have an end date.
3. On September 5, 2017, the district entered into an agreement with Vast Church, under which the church would use the gym of Sisters Elementary School from 6 p.m. to 8 p.m. on Wednesday evenings for church services. Under the agreement, Vast Church paid the district $20 per hour of use. The agreement was for the 2017-2018 school year. However, the parties continued to abide by the terms of the agreement for the 2018-2019 school year.
4. The district also entered into the following agreements:
	* On January 30, 2018, the district entered into an agreement with Sisters Dance Academy, under which the district charged the academy to use the auditorium of Sisters High School on December 15, 2018, and June 21 and 22, 2019. Under the agreement, the amount to be paid to the district would be determined “according to usage.”
	* On February 14, 2019, the district entered into an agreement with Central Oregon Round-Up, under which the district charged Central Oregon Round-Up $1,265 to use certain facilities at Sisters High School from August 8, 2019, to August 11, 2019, plus moneys necessary to pay for custodial services.
	* On March 12, 2019, the district entered into an agreement with Sisters Book Festival, under which the district charged the festival to use Sisters Middle School on October 19, 2019. Under the agreement, the amount to be paid to the district would be determined “according to time.”

## ORS 327.109 Complaints

Under ORS 327.109, when the Oregon Department of Education receives “a complaint that on its face is colorable that a school district or public charter school sponsors, financially supports or is actively involved with religious activity,” the department must investigate the facts alleged in the complaint.[[1]](#footnote-1)

During the investigation, the school district or public charter school must “cooperate to a reasonable degree” with the department. If the school district or public charter school “fails or refuses to cooperate to a reasonable degree” with the department, the department must “presume that there is a substantial basis to believe that the school district or public charter school sponsors, financially supports or is actively involved with religious activity.”[[2]](#footnote-2)

If after the investigation, the department finds that there is no substantial basis to believe that the school district or public charter school sponsors, financially supports or is actively involved with religious activity, the department must notify all parties of the finding.[[3]](#footnote-3)

If after the investigation, the department finds that “there is a substantial basis to believe that the school district or public charter school sponsors, financially supports or is actively involved with religious activity,” the department must: (1) notify all parties of the finding; (2) immediately withhold State School Fund moneys that otherwise would be distributed to the school district or public charter school; (3) if the respondent is a public charter school, order its sponsoring school district to immediately withhold all moneys that otherwise would be distributed by the school district to the public charter school; and (4) schedule a contested case hearing in accordance with ORS 183.413 to determine whether the school district or public charter school sponsors, financially supports or is actively involved with religious activity.[[4]](#footnote-4)

If after holding a contested case hearing, the department determines that the school district or public charter school did not violate ORS 327.109, the department shall distribute all State School Fund moneys that it had withheld.[[5]](#footnote-5) However, if after holding a contested case hearing the department determines that the school district or public charter school did violate ORS 327.109, the department must permanently withhold all moneys not distributed up until the date on which the school district or public charter school ceases to engage in the prohibited conduct.[[6]](#footnote-6)

For purposes of this appeal, this preliminary order constitutes notice of the department’s findings on whether “there is a substantial basis to believe that the school district or public charter school sponsors, financially supports or is actively involved with religious activity.”

### I. Arguments Presented

Complainant argues that Sisters School District’s allowance of Vast Church to hold services at Sisters High School violates ORS 327.109.

Complainant also argues that the religious plaque affixed to the wall of Sisters High School violates ORS 327.109.

In response to Complainant’s first argument, the district argues that it allows Vast Church to use its facilities in the same manner that it allows all other parties to use its facilities.

In response to Complainant’s second argument, the district argues that the religious plaque affixed to the wall of the school does not have a religious purpose.

### II. Legal Standard

Before applying the legal standard set forth in ORS 327.109 to the facts of this case, the department necessarily must explain that standard. The language at issue in this case prohibits a school district or public charter school from sponsoring, financially supporting, or being actively involved with religious activity.[[7]](#footnote-7) To understand that prohibition requires an explanation of the legislative intent of the phrase “sponsors, financially supports or is actively involved with religious activity.”

The Oregon Supreme Court prescribed the method for discerning legislative intent in *Portland General Electric, Co. v. Bureau of Labor and Industries[[8]](#footnote-8)* and *State v. Gaines*.[[9]](#footnote-9) Under this methodology, a person must analyze the text, context, and legislative history of a law and, if legislative intent remains unclear after analyzing the text, context, and legislative history of the law, employ general maxims of statutory construction to resolve the ambiguity.[[10]](#footnote-10)

In this case, the department does not need to discern the legislative intent of the language at issue because the Oregon Court of Appeals already has had occasion to do so. In *Powell v. Bunn*, the court stated that “[t]he terms chosen by the legislature – ‘sponsors, financially supports or is actively involved with religious activity’ – have well-recognized legal significance.”[[11]](#footnote-11) The court further explained that this language is “taken directly from the United States Supreme Court’s Establishment Clause Jurisprudence.”[[12]](#footnote-12) Citing the United States Supreme Court decision *Walz v. Tax Commission*,[[13]](#footnote-13) the court explained that “‘[F]or the men who wrote the Religion Clauses of the First Amendment [to the United States Constitution,] the establishment of a religion connoted sponsorship, financial support, and active involvement of the sovereign in religious activity.’”[[14]](#footnote-14) Thus, in order to understand the application of ORS 327.109, it is imperative to understand the jurisprudence of the Establishment Clause of the First Amendment to the United States Constitution.

The Oregon Supreme Court explained Establishment Clause jurisprudence nearly half a century ago in *Eugene Sand & Gravel v. City of Eugene.[[15]](#footnote-15)* In that case, the Oregon Supreme Court explained that the United States Supreme Court’s methodology for resolving cases pertaining to the establishment of religion in violation of the First Amendment to the United States Constitution is the same methodology for resolving cases pertaining to the establishment of religion in violation of one of several provisions of the Oregon Constitution. These provisions include Article I, section 2 (guaranteeing that “[a]ll men shall be secure in the Natural right, to worship Almighty God according to the dictates of their own consciences”), Article I, section 3 (establishing the rights of free exercise of religion and enjoyment of religious opinions), and Article I, section 5 (prohibiting the use of state moneys “for the benefit of any religious, or theological institution”).[[16]](#footnote-16) As explained by the Oregon Supreme Court, this methodology was established by the United States Supreme Court in *Lemon v. Kurtzman[[17]](#footnote-17)* in 1971.[[18]](#footnote-18) “[T]he appropriate test for deciding an establishment-like challenge brought under the Oregon Constitution is the so-called *Lemon* test, which evolved out of United States Supreme Court jurisprudence.”[[19]](#footnote-19)

To determine whether an act is constitutional under the *Lemon* test, a court will determine whether the act: (1) reflects a clearly secular purpose; (2) has a primary effect that neither advances nor inhibits religion; and (3) avoids excessive government entanglement with religion.[[20]](#footnote-20) In explaining the purpose of the test, the Oregon Supreme Court stated that the test “does not embrace an unusually strict principal of separation of church and state.”[[21]](#footnote-21) Rather, the test “[is] intended to ensure that the state does not cross the line between neutrality toward religion and support of religion.”[[22]](#footnote-22) As stated by the court:

“‘[T]here is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.’”[[23]](#footnote-23)

With this jurisprudent in mind, to discern whether a school district or a public charter school is in violation of ORS 327.109, the department must analyze whether the school district or public charter school is acting in a manner that (1) does not reflect a clear secular purpose; (2) has the primary effect, as opposed to an incidental effect, of advancing or inhibiting religion; or (3) is excessively entangled with religion. The purpose of this analysis is to determine whether the school district or public charter school is being neutral toward religion or is supporting religion. If the school district or public charter school is being neutral toward religion, then it is not in violation of ORS 327.109. If the school district or public charter school is supporting religion, then it is in violation of ORS 327.109.

###  III. Legal Analysis of First Argument on Appeal

Complainant first argues that district’s allowance of Vast Church to hold services at Sisters High School violates ORS 327.109.

It is evident from the facts presented that the district has a clear secular purpose in allowing Vast Church to hold services at Sisters High School. Sisters School Board has adopted a policy for the community use of district facilities. According to the policy:

The Board believes that, while [district facilities] are primarily for the use of the school program, there is a secondary responsibility to the community at large. To this end, the school facilities are available to the community and to groups within the community whenever said use does not conflict with the school program[,] . . . and subject to [certain] . . . criteria.

As written, the policy is not intended to make district facilities available to religious organizations. The policy is intended to make district facilities available to the entire community, including both religious and secular organizations.

It is also evident from the facts presented that the district’s policy does not have the primary effect of advancing religion. First, the criteria by which members of the community may use district facilities applies to all applicants equally. Second, many organizations, both religious and secular, have benefited from the policy. For example, with respect to Vast Church, the district entered into three separate agreements, one on January 1, 2014, one on May 3, 2017, and one on September 5, 2017. The first two agreements were for use of Sisters High School on Sundays. Under the agreement, Vast Church agreed to pay the district $221.40 per day of use to rent the building and $220 per day of use for custodial services. The third agreement was for use of the gym of Sisters Elementary School on Wednesday evenings for church services. Under the agreement, Vast Church agreed to pay the district $20 per hour of use.

On the other hand, with respect to secular organizations, the district entered into three agreements with three different community organizations over the course of the past year and a half. On January 30, 2018, the district entered into an agreement with Sisters Dance Academy, under which the district charged the academy to use the auditorium of Sisters High School on three separate occasions. Under the agreement, the amount to be paid to the district would be determined “according to usage.” On February 14, 2019, the district entered into an agreement with Central Oregon Round-Up, under which the district charged Central Oregon Round-Up $1,265 to use certain facilities at Sisters High School, plus moneys necessary to pay for custodial services, over the course of four days. Finally, on March 12, 2019, the district entered into an agreement with Sisters Book Festival, under which the district charged the festival to use Sisters Middle School on a single occasion. Under the agreement, the amount to be paid to the district would be determined “according to time.”

In the department’s view, the general applicability of the district’s policy, and the actual use of that policy by both religious and secular community organizations, substantiate that the policy does not have the primary effect of advancing religion.

Finally, it is evident from the facts presented that the district is not acting in a manner that is excessively entangled with religion simply because it allows Vast Church to enter into agreements for the use of district facilities. First, Vast Church may apply to enter into such agreements in the same manner that any other community organization may apply to enter into them. Second, the criteria by which members of the community may use district facilities applies to Vast Church in the same manner that it applies to any other community organization. Third, Vast Church pays for using district facilities just as all other community organizations pay to use the facilities. Finally, Vast Church’s use of district facilities has not affected other community organizations’ ability to use the facilities. There simply is no evidence of religious entanglement.

In consideration of the facts, the department finds that there is not a substantial basis to believe that the district, in allowing Vast Church to use district facilities, is supporting religion rather than being neutral toward religion.

### IV. Legal Analysis of Second Argument on Appeal

Complainant also argues that the religious plaque affixed to the wall of Sisters High School violates ORS 327.109. That plaque is affixed to an outer wall of the school, near an entrance. The following is written on the plaque: “THE KNOWLEDGE OF GOD IS THE BEGINNING OF WISDOM.” The size of the plaque is approximately one foot by one foot.

For purposes of applying the *Lemon* test to the plaque, the department once again turns toward the Oregon Supreme Court’s findings and holding in *Eugene Sand & Gravel* because that case presents similar circumstances to this case. In that case, the court was determining the constitutionality of a cross displayed on public property. The court explained the circumstances under which the cross was being displayed:

* The cross was sponsored by a secular organization, not a religious organization.
* The city approved the cross as a monument memorializing war veterans.
* Affixed to the cross was a plaque describing it as a monument memorializing war veterans.
* The cross was lighted on any day where it would have been fitting to be patriotic, including on Memorial Day, Independence Day, Thanksgiving, and Christmas.[[24]](#footnote-24)

The court also explained that in eight previous cases involving the constitutionality of religious symbols on public property, both state and federal, the courts held such displays to be constitutionally permissible.[[25]](#footnote-25) The court specifically noted that in each of those cases, the facts were either substantially the same as or far weaker than the facts at issue in *Eugene Sand & Gravel*.[[26]](#footnote-26) The court further explained that “[c]ourts have held that national mottos such as ‘In God We Trust’ and ‘One Nation Under God’ need not be removed from coins and currency issue by the federal government and the pledge of allegiance to the United States or from the national anthem.”[[27]](#footnote-27)

In consideration of those cases, the court explained how the *Lemon* test applies in circumstances involving a religious symbol. With respect to the first prong of the *Lemon* test – under which a court will determine whether the symbol has a clear secular purpose – the court explained that

in determining the validity of the display of either a cross or a nativity scene on public property, the controlling question is not whether such a cross or nativity scene is a religious symbol, but whether the purpose of its display is religious or secular. Thus, the requirement of “purpose” is satisfied by displays of nativity scenes on public property in connection with the Christmas season as a secular festival or pageant. Indeed, permanent displays of crosses and other religious monuments on public property have been uniformly held valid . . . even when displayed in connection with a secular festival or event.[[28]](#footnote-28)

In consideration of the cross’s purpose, that it memorializes war veterans, the court held that the first prong of the *Lemon* test had been satisfied.

With respect to the second prong of the *Lemon* test – under which a court will determine whether the symbol has the primary effect, as opposed to an incidental effect, of advancing or inhibiting religion – the court explained that

the display of a religious symbol such as a cross, nativity scene, or crucifix on public property does not have a “primary effect” to either advance or inhibit religion . . . [A]lthough compulsory prayers in a public school would be held to have such a “primary effect,” the passive display of a religious symbol in a public school may not have such a “primary effect.”[[29]](#footnote-29)

In consideration of the cross’s sponsor, a secular organization, and in consideration of the fact that the cross was lighted on any day on which it would have been fitting to be patriotic, including Memorial Day, Independence Day, Thanksgiving, and Christmas, the court held that the second prong of the *Lemon* test had been satisfied.[[30]](#footnote-30)

Finally, with respect to the third prong of the *Lemon* test – under which a court will determine whether the symbol is excessively entangled with religion – the court explained that “this requirement is not violated by the fact of payment by the government for maintenance of the display of a religious ‘symbol,’” and that “the requirement is violated if the government participates in an active manner in the planning and organization of activities which involve such a display.”[[31]](#footnote-31) In consideration of the cross’s sponsor, a secular organization, the court held that the third prong of the *Lemon* test had been satisfied.[[32]](#footnote-32)

Finally, with respect to religious symbols that specifically allude to the presence of a higher power, the department necessarily must consider the United States Supreme Court opinions *Zorach v. Clauson*, in which the court held that presupposition of a supreme being does not constitute the establishment of religion,[[33]](#footnote-33) and *Lynch v. Donnelly*, in which the court held that such presupposition constitutes a type of “ceremonial deism” that is “protected from Establishment Clause scrutiny” because it has “lost through rote repetition any significant religious content.”[[34]](#footnote-34)

In the present case, the religious symbol at issue is a small plaque, affixed to an outer wall of a school, near a school entrance, on which is written the following: “THE KNOWLEDGE OF GOD IS THE BEGINNING OF WISDOM.” Obviously, the plaque is a religious symbol. However, it would be wrong to associate the plaque with any particular religion.[[35]](#footnote-35) It makes a general statement about how knowing “god” is wise. It does not cite any specific creed, denomination, religious text, or religious doctrine. It would even be wrong to assume the “god” referenced on the plaque is associated with one of the three major monotheistic religions, Judaism, Christianity, or Islam. Without context or attribution, the plaque could be referencing any of a number of religions equating knowledge of god with wisdom.

It should also be noted that Complainant has not presented evidence that the plaque does not reflect a clear secular purpose, or that it has the primary effect of advancing or inhibiting religion, or that by having it affixed to an outer wall of a school, the district is excessively entangled with religion. The only aspect of the plaque that is definitively religious is that it presupposes a supreme being.

As explained above, the United States Supreme Court has held that presupposition of a supreme being does not constitute the establishment of religion.[[36]](#footnote-36) Rather, such presupposition constitutes a type of “ceremonial deism” that is “protected from Establishment Clause scrutiny” because it has “lost through rote repetition any significant religious content.”[[37]](#footnote-37) In the absence of evidence to the contrary, the department finds that the plaque at issue here is also nothing more than “ceremonial deism.” The plaque contains a general statement about how knowing “god” is wise. Such a statement is more ritualistic secularism than religious advocacy. It has a secular purpose, it does not have the primary effect of advancing religion, and it clearly is not excessively entangled with religion.

 In consideration of the facts, the department finds that there is not a substantial basis to believe that the district, in refusing to remove the plaque from the school, is supporting religion rather than being neutral toward religion.

## Conclusion

In consideration of the facts, the Oregon Department of Education finds that there is not a substantial basis to believe that Sisters School District is sponsoring, financially supporting, or is actively involved with religious activity. The department finds that the district is not in violation of ORS 327.109.

If you have any questions or concerns, do not hesitate to contact me.

Sincerely,

Mark Mayer

Complaint and Appeals Coordinator

Office of Government and Legal Affairs

Mark.Mayer@state.or.us

503-947-0464

1. ORS 327.109(1). [↑](#footnote-ref-1)
2. ORS 327.109(4). [↑](#footnote-ref-2)
3. ORS 327.109(3). [↑](#footnote-ref-3)
4. ORS 327.109(2). [↑](#footnote-ref-4)
5. ORS 327.109(6)(a). [↑](#footnote-ref-5)
6. ORS 327.109(6)(b). [↑](#footnote-ref-6)
7. ORS 327.109(1). [↑](#footnote-ref-7)
8. 317 Or. 606 (1993). [↑](#footnote-ref-8)
9. 346 Or. 160 (2009). [↑](#footnote-ref-9)
10. *Portland General Electric*, 346 Or. at 610-611; *Gaines*, 317 Or. at 171-172. [↑](#footnote-ref-10)
11. 185 Or. App. 334, 358 (2002), *rev. den.*, 336 Or. 60, (2003). *See also Brian v. Oregon Government Ethics Commission*, 320 Or. 676, 683 (1995) (statutory words with a well-understood legal meaning are given that meaning). [↑](#footnote-ref-11)
12. 185 Or. App. At 358. [↑](#footnote-ref-12)
13. 397 U.S. 664, 669 (1970). [↑](#footnote-ref-13)
14. *Powell* at 359, *citing Walz* at 668. [↑](#footnote-ref-14)
15. 276 Or. 1007 (1976). [↑](#footnote-ref-15)
16. *Powell* at 356, *citing Eugene Sand & Gravel* at 1016, n. 6. [↑](#footnote-ref-16)
17. 403. U.S. 602 (1971). [↑](#footnote-ref-17)
18. *Id.* at 356. [↑](#footnote-ref-18)
19. *Id.* [↑](#footnote-ref-19)
20. *Id.*, *citing Eugene Sand & Gravel* at 1012-13. [↑](#footnote-ref-20)
21. *Id.* at 357, *citing Eugene Sand & Gravel* at 1013. [↑](#footnote-ref-21)
22. *Id.*, *citing Eugene Sand & Gravel* at 1013. [↑](#footnote-ref-22)
23. *Eugene Sand & Gravel* at 1014, *quoting Walz* at 669. [↑](#footnote-ref-23)
24. *Id.* at 1016-17. [↑](#footnote-ref-24)
25. *Id.* at 1018. [↑](#footnote-ref-25)
26. *Id.* The cases involved the following religious symbols: (1) a 50-foot Latin cross, sponsored by Council of Churches, permanently on display on public fairgrounds; (2) a monument inscribed with the Ten Commandments, permanently on display on courthouse grounds; (3) lights arranged in the shape of a Latin cross, annually displayed on a courthouse during Christmas season; (4) a nativity scene, temporarily displayed in a federal park adjacent to the White House during Christmas season; (5) two nativity scenes, both temporarily displayed on public school property during Christmas season; (6) plaques inscribed with the words “In God We Trust,” permanently displayed in public schoolrooms; and (7) a statue of a nun, permanently on display in a public park. [↑](#footnote-ref-26)
27. *Id.* at 2019. [↑](#footnote-ref-27)
28. *Id.* at 2020. [↑](#footnote-ref-28)
29. *Id.* at 2021. [↑](#footnote-ref-29)
30. *Id.* [↑](#footnote-ref-30)
31. *Id.* at 2021-22. [↑](#footnote-ref-31)
32. *Id.* at 2022. [↑](#footnote-ref-32)
33. 343. U.S. 306, 313 (1952). [↑](#footnote-ref-33)
34. 465 U.S. 668, 716 (1984). [↑](#footnote-ref-34)
35. In the Judaic, Christian, and Muslim faiths, *fear* of God, not knowledge of God, is the beginning of wisdom. *See* Proverbs 9:10 (“fear of the Lord is the beginning of wisdom”). [↑](#footnote-ref-35)
36. 343. U.S. at 313. [↑](#footnote-ref-36)
37. 465 U.S. at 716. [↑](#footnote-ref-37)