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## Holiday Decor and the First Amendment

Around this time of year we frequently get questions about the propriety of certain holiday decorations in offices and elsewhere on campus. People want the freedom to express their holiday enthusiasm, which sometimes includes religious beliefs and symbolism. Under the Free Exercise Clause the University, as a governmental agency, may not prohibit the free exercise of religion. On the other hand, under the Establishment Clause the University may not endorse religion, either of a particular variety or in general. These rules are intended to guarantee freedom of religion (which includes freedom from religion) for all.

Case law has addressed the tension between rights of free religious expression and the Establishment Clause that are inherent in such situations. We analyze the questions we receive based on guidance from the courts. Here are some of the questions we have addressed at K-State, along with our answers:

*Q: There are decorated Christmas trees in different places all over campus. This seems like a show of University support for a Christian holiday. Is this allowed under the Establishment Clause?*

A: Yes. Christmas trees are considered by the courts to be secular symbols. Same for Santa Claus, reindeer, candy canes, and the like.

*Q: What about nativity scenes? Are they the same as Christmas trees?*

A: No. Nativity scenes are generally considered to be religious symbols. Where and how they are displayed can make a difference as to whether they are permitted under Constitutional law. If a nativity scene is displayed in a public area

on campus standing by itself and without a particular secular purpose, it could appear to be an endorsement of religion by the University. But if it is displayed together with secular symbols as a general celebration of the season, or in an art gallery, an architecture studio, or a history exhibit for pedagogical purposes, it would likely be allowed under the law. If a professor wears a nativity scene charm on a necklace, or the depiction of one on a T-shirt, that would generally be allowed as a personal expression. If, on the other hand, a professor or other University employee includes a religious holiday message in official correspondence, or on the chalkboard during lectures (without a course-related purpose), that would likely be considered expression under the auspices of the University in violation of the Establishment Clause.

*Q: The person in the front reception area of my office has an Easter bunny on her desk. Is that all right?*

A: Yes. An Easter bunny is not considered a religious symbol, and in any case, its placement on an individual's desk usually does not indicate a message or endorsement of any kind by the University.

We at the OGC are always available to address specific questions and provide advice about these and other Free Expression/Establishment Clause matters for the University, so please feel free to contact us.

## Raffles as Fundraisers

Student organizations, departments and other groups on campus sometimes wish to conduct raffles as a quick, fun and easy way to raise money for worthwhile projects. But care must be taken so that raffles do not run afoul of the law.

In Kansas, a raffle is considered a lottery and thus a form of illegal gambling under K.S.A. 21-6403 if it is "an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance." (State-run lotteries and tribal gaming are exempted.)

All three of these elements must be present to make a raffle an illegal lottery:

- (1) consideration (usually meaning payment);
- (2) a prize; and
- (3) chance or luck.

If any one of the elements is missing, the raffle is not an illegal lottery. So we advise that one or more of the elements be eliminated. This can be done in various ways.

The element of consideration can be taken out by



## Featured FAQ

**Q: May a department or other unit allow an unpaid volunteer to perform work?**

**A:** Yes, in some situations.

Whenever volunteer status for anyone is being considered, the following questions should be asked first: (1) Is the volunteer work of the same nature as the paid work the person is going to start doing or has been doing? (2) Is the person currently unable to work legally in the U.S.? If the answer to either question is yes, the person **MAY NOT** work as a volunteer.

In all cases, there should be a formal document setting forth the relationship between the volunteer and the University, including the terms and conditions of the volunteer appointment. Department heads/deans/directors (“unit heads”) should use a volunteer appointment document or memorandum of understanding reviewed by the Office of General Counsel. It should be signed by the volunteer, the University employee who will be supervising the volunteer, and the unit head.

Volunteers are covered for liability by the Kansas Tort Claims Act and for workplace injuries by the Workers Compensation Act, just like regular employees of the University. The volunteer agreement provides evidence of the relationship, which is helpful in ensuring those coverages.

Similarly, volunteers are subject to University policies, including conduct codes.

Questions and requests for written volunteer agreements should be directed to the Office of General Counsel.

*For more FAQs, please visit our website at [k-state.edu/generalcounsel/faq](http://k-state.edu/generalcounsel/faq)*

### Visit our website:

[k-state.edu/generalcounsel](http://k-state.edu/generalcounsel)

Our website gives an introduction to the services we provide and addresses frequently asked questions. It also houses a list of resources for easy access to laws and policies applicable to University operations.

### Raffles as Fundraisers continued

not requiring payment for the chance to win. A donation can be suggested, but it should be clear up front (via signage, flyer, etc.) that no payment or donation is necessary, and anyone asking to participate without paying must be allowed to do so.

Another option is to introduce an element of skill so that chance or luck is not what determines the winner. An example would be having participants guess how many jelly beans are in a jar. Chance can still be an element as long as it is not the dominant element.

The county attorney where the raffle is held enforces the criminal code and would be the office to receive any complaints about a raffle held there. When in doubt about a particular

event, your group can always contact the local county attorney’s office ahead of time to ask whether the event would be considered legal. If you have the approval of the county attorney in advance (preferably in writing), you will not have to worry about prosecution as long as you conduct the event as approved.

The OGC is always happy to help with any questions you have about raffles to be conducted on campus or in connection with the University.

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## For Me?

We are often asked by K-State employees when and under what circumstances it is okay to accept gifts, discounts and other offerings. Accepting or requesting gifts, meals, entertainment and travel offered because of your official position is generally prohibited, with several very limited exceptions. All State of Kansas employees are subject to these rules, and violations can result in a civil fine of up to \$5,000 and/or removal from state service. So it is prudent to be familiar with the rules, to know where to find answers, and to adopt a practice

of asking questions when in doubt. The Office of General Counsel has published information pertaining to state ethics rules on its website and is available to help answer questions. The State Governmental Ethics Commission’s guidelines are found at:

[http://www.kansas.gov/ethics/State\\_Level\\_Conflict\\_of\\_Interest/Guidelines\\_for\\_State\\_Employees\\_Concerning\\_Meals,\\_Gifts,\\_Entertainment\\_&\\_Travel/index.html](http://www.kansas.gov/ethics/State_Level_Conflict_of_Interest/Guidelines_for_State_Employees_Concerning_Meals,_Gifts,_Entertainment_&_Travel/index.html)

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## Dear Atty

*We have initiated a new advice column called “Dear Atty” to receive and answer questions from University personnel concerning legal questions you have about conducting business on behalf of the University. Please send your questions for publication to [attys@ksu.edu](mailto:attys@ksu.edu), including Dear Atty in the subject line. We may reword questions for conciseness, clarity, and consolidation, and we will always publish questions anonymously.*

Dear Atty,

**What should I do if I receive a call, letter, email or other contact from an attorney outside the University about a University matter?**

–*Nita Know*

Dear Nita,

Forward the letter, email or phone message to the Office of General Counsel immediately and we will communicate with the attorney. Or refer the attorney to us and also contact us immediately at 785-532-5730. Do not discuss the matter with the attorney.

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## Quote of the Day

“If it is not true, do not say it; if it is not right, do not do it.”

– Marcus Aurelius

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### About this Publication:

This newsletter is designed to serve as a practical informational tool, bringing you topics of interest and practical tips. It should not be relied on as a substitute for legal advice. Laws, regulations and policies change frequently, and legal advice requires careful consideration and application of all relevant facts. If you have legal questions or need legal advice concerning any University matter, please contact the Office of General Counsel directly at 785-532-5730 or [attys@k-state.edu](mailto:attys@k-state.edu)