

## ***Prayer At Association Events***

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This topic addresses generally the permissibility of pre-game prayers at activities association-sponsored events, and the specific issue of the pre-game prayers at activities association-sponsored events held on the premises of private or parochial institutions. As discussed below, it appears that such activity should not be allowed.

In a relatively recent decision, the Supreme Court reviewed the nature of an association very similar to the NSAA and held that the association was a state actor.<sup>1</sup> *Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531 U.S. 288 (2001). Specifically, the Court found that <sup>2</sup>The nominally private character of the Association is overborne by the pervasive entwinement of public institutions and public officials in its composition and workings, and there is no substantial reason to claim unfairness in applying constitutional standards to it.<sup>3</sup> *Id.* 531 U.S. at 298. The same conclusion has been reached in the Eighth Circuit, see *United States ex rel. Missouri State High School Activities Association*, 682 F.2d 147 (1982), and Nebraska, see *Reed v. Nebraska School Activities Association*, 341 F.Supp. 258 (D. Neb. 1972). Thus, it is virtually beyond dispute that the NSAA is a state actor.

Not surprisingly, there is substantial authority to the effect that state actors may not persuade or compel students to participate in a religious exercise. In a case involving prayer at a public school graduation ceremony, the Supreme Court found that the degree of school involvement in the prayers made it clear that the prayers bore the imprint of the State and thus put school-aged children in an untenable position. *Lee v. Weisman*, 505 U.S. 577, 590 (1992). The Court, prior to finding such prayer unconstitutional, stated that <sup>4</sup>What to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy.<sup>5</sup> *Id.* 505 U.S. at 593. Approximately eight years later, in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), the Supreme Court applied the principles

of *Wiseman* to a case involving the public school=s policy of allowing student-led prayer before football games. Once again, the Court found such prayer unconstitutional, noting that Ath~~e~~ realities of the situation plainly reveal that [the school] policy involves both the perceived and actual endorsement of religion.<sup>i</sup> *Id.* 530 U.S. at 305. In other words, merely allowing such prayer constituted an unconstitutional State approval thereof. *Id.* at 313. Even more recently in *Doe v. School District of Norfolk*, 340 F.3d. 605 (8<sup>th</sup> Cir., 2003), the principles set forth in *Wiseman* and *Santa Fe* were cited as authoritative by the Eighth Circuit Court of Appeals in a case involving a Nebraska school district.

The issue of prayer at student assemblies and extracurricular activities was also recently addressed by the U.S. Department of Education in a publication required under the No Child Left Behind Act, where it was stated:

A[W]here school officials determine or substantially control the content of what is expressed, such speech is attributable to the school and may not include prayer or other specifically religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student speech that is not in fact attributable to the school, school officials may take appropriate, neutral disclaimers to clarify that such speech (whether religious or non-religious) is the speaker=s and not the school=s.<sup>i</sup>

The NSAA, as the entity in control of NSAA sponsored events, will be deemed to determine and control the content of expression at such event. As a putative state actor, the NSAA may not allow prayer or other such content at its activities. This standard would apply regardless of whether the event is held on the grounds of a private or parochial school. Events such as district basketball tournaments held at private or parochial member schools are nonetheless NSAA activities, not activities of the private or parochial school. It may be prudent to add a disclaimer in the program or on the tickets for such events as is suggested in the U.S. Department of Education publication.

The foregoing analysis was adopted by the Oklahoma Secondary School Activities Association (AOSSAA<sup>i</sup>) in a recently adopted policy on public prayer. That policy provides that prayer will not be given at those activities in which the OSSAA has *substantial involvement*. OSSAA Board of Directors Policy 20. Based upon the foregoing authority, it would be our recommendation that where the NSAA has substantial involvement in an event, it should not allow public prayer at the event.

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