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August 16, 2004

Mr. Robert C. Phillips  
149 Northwest 112<sup>th</sup> Place  
Branford, FL 32008

**Re: Your Inquiry Concerning Constitutionality of Access by Church to  
Gilchrist County Community Centers**

Dear Mr. Phillips:

I am writing to respond to your request for an opinion concerning the constitutionality under the First Amendment to the United States Constitution of a county lease of community center facilities to a religious organization such as a church for worship services which are open to the public. The Center for Law & Religious Freedom is the litigation and legal education division of the Christian Legal Society, a nonprofit membership organization committed to defending the religious freedoms of all citizens.

I understand from your correspondence that Gilchrist County offers its public community centers for rent to a range of community organizations, including bingo groups, a Quilting Club, the Boy Scouts and the 4-H. The County imposes a \$50 rental fee for such facilities, and spaces are offered on a first-come, first-served basis. You stated that your church began utilizing a community center for its worship services two weeks ago, but that after a complaint to the County Commission, the Commission is now set to consider whether such rentals on a neutral basis to religious and non-religious users violates the "separation of church and state."

At the September 15, 2003 meeting of the Board of County Commissioners, the Commissioners appear to refer to an established policy or custom of the County in allowing access to such facilities, in the context of an application by Nationwide Explosion Outreach Ministries. The minutes state, "Concerning the question of separation of 'Church and State,' Mr. McPherson advised that the Board would follow the same policies as with leasing the precincts to any other organization." Likewise, the Commissioner Report for the O'Steen Precinct contained in the minutes of the November 6, 2000 Commissioners' meeting reflect, "Commissioner Bush stated that Mr. O'Steen had contacted him in regards to using the O'Steen precinct, temporarily, for church services. Mr. Mutch advised that this would be permissible as long as they paid the rental fee but that this would leave it open to any other religious groups." Finally, the Tri-County Regional Library System Meeting Room Policy set forth in the August 7, 1995 meeting minutes, states, "The meeting rooms of the Tri-County Regional Libraries are available for library-sponsored programs and for non-profit organizations that are of an educational, cultural, civic, or *religious* nature (emphasis added). While the Gilchrist County

Ordinances do not appear to specifically address this situation, they do embody the County and State of Florida public policies against discrimination on the basis of religion or religious belief in leasing residential housing. See COUNTY ORD., Art. II, Housing Discrimination, Sec. 50- 32; Fair Housing Act, F.S. § 760.20 *et seq.*

This policy and custom of Gilchrist County is undoubtedly rooted in the constitutional rule prohibiting discrimination on the basis of religion or religious belief in leasing public facilities. This rule was clearly articulated by the United States Supreme Court in *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993), in which the Court unanimously held that a public school district could not refuse to lease classroom space after hours to a church for the purpose of a public instructional series on parenting, where it leased that space to other secular organizations. Nor does the fact that the church intends to use the premises for worship change the result mandated by the First Amendment, as several courts have held that a church must be allowed access for worship services when leases are available to community organizations for similar uses, such as concerts and instruction. *See, e.g., Bronx Household of Faith v. Board of Education of the City of New York*, 331 F.3d 342 (2<sup>nd</sup> Cir. 2003) (affirming preliminary injunction forbidding school district from refusing to lease to a church for purposes of “religious worship and instruction”); *Campbell v. St. Tammany Parish School Board*, 2003 WL 21783317 (E.D.La. 2003) (school district policy allowing use of school classrooms by community groups except for “religious” uses held unconstitutional). *See also Good News Club v. Milford Central School*, 533 U.S. 98 (2001) (evangelistic “Good News Clubs” for children could not be excluded from using school premises after school despite presence of prayer, worship and proselytization in club meetings for children).

We hope this information is helpful in your effort to assist the Gilchrist County Commissioners to respect the constitutional rights of your church to lease public meeting facilities. Please do not hesitate to contact us if you need further assistance.

Sincerely,

STEVEN H. ADEN, ESQ.  
Chief Litigation Counsel

Cc: Gregory S. Baylor, Director

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