

Q&A: Invocational Prayer at Council Meetings

By Terry Timmins, Associate General Counsel for the League

The offering of an opening invocation or prayer at meetings or gatherings of private organizations and public bodies is a longstanding tradition in our country. However, there has been an ongoing public debate over the appropriateness of such prayer at meetings of public bodies. Over the course of the last 25 years, our courts have established guidelines to assure an appropriate balance is struck between the dual nature of our First Amendment protections, which first prohibits government from “establishing” an official religion, but then assures our citizens of their right to the “free exercise” of their religion and of their “freedom of speech”. This Q&A will address some of the common questions relating to prayer at city council meetings.

Q. Is prayer permitted at the opening of a meeting of a public body, such as a city council?

A. Yes. In a 1983 decision (*Marsh v. Chambers*), the United States Supreme Court held that the Nebraska Legislature did not violate the Establishment Clause of the First Amendment to the United States Constitution by allowing a prayer to be said at the opening of its sessions. The Court based its decision on the fact that “[t]he opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country” and “[t]his unique history leads [the Court] to accept the interpretation of the First Amendment draftsmen who saw no real threat to the Establishment Clause arising from a practice of prayer . . .” Essentially, the Supreme Court determined that the offering of an invitational prayer at the opening of a public meeting does not rise to the level of the “establishment of religion” by the body holding that meeting, and is thus not prohibited by the Constitution.

Q. Can prayer be offered at anytime during a council meeting, or is there a customary time for offering prayer in connection with the meeting of a public body?

A. The cases which have upheld prayer at public meetings have recognized the longstanding tradition of opening public meetings with an invitational prayer. Such prayer is typically given at a time when the body has just gathered, but before it has actually begun its business. The purpose of such prayer is to give the members of the body a moment to focus on the higher purposes which they serve as members of a governmental body, and to invoke guidance, wisdom and a sense of common purpose and cooperation in the actions that they are

about to undertake. Prayer offered during the meeting, while deliberations are underway on matters of governmental business, may not be viewed in the context of this longstanding tradition.

Q. Are there any guidelines as to the type of prayer that can be offered at the meeting of a public body?

A. In a number of cases, federal courts have recognized the appropriateness of what they refer to as “invocational prayer” at the opening of a public meeting. In Snyder v. Murray City Corporation, a 1998 case, the Court engaged in the following analysis of this issue.

“Of course, all prayers ‘advance’ a particular faith or belief in one way or another. The act of praying to a supreme power assumes the existence of that supreme power. Nevertheless, the context of the decision (*Marsh v. Chambers*) - in which the (U.S. Supreme Court) considered the constitutionality of a Presbyterian minister’s “Judeo Christian,” “nonsectarian” invocations for the Nebraska Legislature - underscores the conclusion that the mere fact a prayer evokes a particular concept of God is not enough to run afoul of the Establishment Clause. Rather, what is prohibited by the clause is a more aggressive form of advancement, i.e., proselytization... By using the term “proselytize,” the Court indicated that the real danger in this area is effort by the government to convert citizens to particular sectarian views... As the Court reiterated in (another case), “[I]n the hands of government what might begin as a tolerant expression of religious views may end in a policy to indoctrinate and coerce. A state-created orthodoxy puts at grave risk that freedom of belief and conscience which are the sole assurance that religious faith is real, not imposed.”

Q. Can a public body regulate the giving of prayer at its public meetings?

A. Yes. A governing body can chose to allow an invocational prayer at the opening of its meetings, and in so doing it can also establish procedures ensuring all religions or religious groups are given the opportunity to participate if they chose to do so.

Q. Can a public body direct or restrict the kind or content of prayer that may be offered in connection with its meetings?

A. Yes. A governmental body can direct that invocational prayer offered at the opening of its meetings not be of a proselytizing nature – that is, it can direct that invocational prayer offered at its meetings not advance one religion or religious belief over others, or that it not criticize particular religions or religious beliefs.

Q. What can a public body do to assure that it is being fair and non-discriminatory in providing for invocational prayer at its meetings?

A. Some cities have established the practice of encouraging representatives of all religions and religious beliefs to participate in the giving of invocational prayer at council meetings. The city then draws from the pool of persons who have volunteered to give invocations, and assigns them to particular council meetings. To assure that the prayers offered at council meetings meet the test outlined in the *Marsh* case, some cities communicate with those persons prior to their appearance at a council meeting. In that communication, the volunteer is advised that many nationalities and religions are represented in the community, and that the intent of the invocational prayer is to instill a sense of purpose and solemnity over the city council's proceedings. The letter then requests that the volunteer's invocation be of a nondenominational nature, thereby avoiding any appearance of endorsing a particular set of religious beliefs.

(italic) Note: This article is intended to acquaint readers with general principles, and is not a comprehensive review of the topic. This is not legal advice. City officials and employees should consult with their city attorney for legal advice on this matter.

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Prayer during public meetings is a longstanding tradition in the U.S. This Q&A addresses some of the common questions related to prayer at city council meetings.