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**ATTORNEY GENERAL**  
**STATE OF ILLINOIS**  
**SPRINGFIELD**

June 29, 1979

FILE NO. S-1450

CONSTITUTION:  
Limitations on Free Exercise of  
Religion at Public Fairs

Honorable Jerry Crisel  
Edwards County State's Attorney  
16 East Elm Street  
Albion, Illinois 62806

Dear Mr. Crisel:

I have your letter wherein you request an opinion on whether "members of the International movement for Krishna Consciousness or other religious groups may, in the exercise of their first amendment rights, enter the fair grounds during fair time and circulate generally throughout the fair grounds without leasing a designated space for their activity." It is my opinion that members of the International Society for Krishna Consciousness or other religious groups may not be required to lease space to exercise their first amendment rights.

The Edwards County Fair receives State funds under the provisions of the Agricultural Fair Act. (Ill. Rev.

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Stat. 1977, ch. 85, par. 651 et seq.) It is a free fair, no admission fee is charged. The International Society for Krishna Consciousness (ISKCON) has requested permission for a small number of its members to circulate through the fair to discuss their beliefs, distribute literature and solicit donations. ISKCON members believe that these activities constitute a religious duty known as "sankirtan". It is their contention that "sankirtan" cannot be adequately conducted from a booth.

It is clear that the fairgrounds are a public forum which are suitable for the exercise of first amendment rights. (Wolin v. Port Authority (2d Cir. 1968) 392 F. 2d 83, cert. denied (1968), 393 U. S. 940; International Society for Krishna Consciousness v. State Fair (N. D. Tex. 1978), 461 F. Supp. 719; International Society for Krishna Consciousness v. Bowen (S. D. Ind. 1978), 456 F. Supp. 437; International Society for Krishna Consciousness v. Evans (S. D. Ohio 1977), 440 F. Supp. 414.) In addition, it is well settled that the solicitation of donations by ISKCON members does not alter the essentially religious nature of their activities. (Murdock v. Pennsylvania (1943), 319 U. S. 105.) However, first amendment rights may be subjected to reasonable limitations on the time, place or manner of their execution. Schneider v. State (1939), 308 U. S. 147; Cantwell v.

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Connecticut (1939), 310 U. S. 296; Prince v. Massachusetts (1944), 321 U. S. 158.

The decision in International Society for Krishna Consciousness v. Griffin ( W. D. Pa. 1977), 437 F. Supp. 666, represents the prevailing opinion with regard to limitations on the exercise of first amendment rights. In that case, members of ISKCON challenged the regulations of the Greater Pittsburgh International Airport. The regulations limited the activities of ISKCON members to specified areas in the airport complex and further required that any transaction involving money be conducted from designated booths. Airport officials offered no justification for these regulations. The court noted that the regulations seemed to be designed to ensure that the ISKCON activities would be conducted in the time, place and manner least likely to bring success and held at page 672:

"The first amendment was not designed to allow expression only when its effects are destined to be futile."

The court ordered that regulations which interfere with protected first amendment rights should be premised on actual interference with the operation of the airport.

Although a booth restriction is arguably only an incidental infringement on the free exercise of religion, "once the individual demonstrates some constitutional burden,

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whether substantial or incidental, direct or indirect, upon his free exercise of religion, the State must show 'substantial interest' sufficient to sustain its acts." Keegan v. University of Delaware (Del. S. Ct. 1975), 349 A. 2d 14, 17.

It is obvious that the nature of the public forum in cases involving airports differs greatly from the situation presented by a fair. "A fair is almost by definition a congeries of hawkers, vendors of wares and services, and purveyors of ideas, commercial, aesthetic and intellectual." (International Society for Krishna Consciousness v. State Fair (N. D. Tex. 1978), 461 F. Supp. 719, 721.) Thus, regulations which limit the operation of first amendment rights tend to be inconsistent with the purposes of a fair. In the context of State or county fairs, there are two decisions which serve to illustrate the types of State interests which have not been sufficiently compelling to justify infringement on the first amendment right to free exercise of religion.

In International Society for Krishna Consciousness v. Bowen (S. D. Ind. 1978), 456 F. Supp. 437, officials of the Indiana State Fair attempted to limit the activities of ISKCON members to space leased for that purpose. It was argued that the limitations imposed on ISKCON members and on other exhibitors promoted a policy of orderliness which helped the officials "ensure that its fairgoers are assured

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the maximum opportunity to enjoy the Indiana State Fair \* \* \*." (456 F. Supp. 440.) The court rejected this argument, holding that "it is clear that adoption of the resolution for a salutary purpose \* \* \* will not serve what is otherwise a constitutionally deficient regulation of expression." (456 F. Supp. 443.) In addition, the court indicated that even in the presence of a compelling State interest the booth restriction would be an impermissible limitation:

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\* \* \* To prohibit plaintiffs from engaging in all first amendment protected expression in all public areas of the State Fair except in a specific booth in a specific building is a device too remotely related to the achievement of any governmental purpose to withstand constitutional scrutiny under any test which might be applied.

\* \* \*

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456 F. Supp. 444.

A similar conclusion was reached in a case involving regulations of the Texas State Fair. (International Society for Krishna Consciousness v. State Fair (N. D. Tex. 1978), 461 F. Supp. 719.) Fair officials argued that the booth requirement was uniformly applied to all exhibitors and that the regulation served to promote an important State interest in orderliness and control. The limitation was also advanced as a means to deter fraud and misrepresentation. The officials presented evidence that instances of

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fraud and misrepresentation had, in fact, occurred. In its analysis of the problem, the Texas court noted at page 723 that "the inescapable fact is that the impact of the booth restriction upon the protected right of ISKCON devotees is markedly different from its impact on other commercial vendors." Thus, a regulation which will have varying impacts can be justified by State interests which may be sufficiently compelling as to one group but insufficient as to another. The court held that in the present case the State interests involved were not compelling when balanced against the protected right of free exercise of religion.

I am aware of the decision in International Society for Krishna Consciousness v. Evans (S. D. Ohio 1977), 440 F. Supp. 414, which is the earliest of the State fair cases. The Evans court believed the question was one of free speech, rather than free exercise of religion. Consequently, the court determined that the free speech rights of each exhibitor were threatened by the ISKCON request: i.e., if ISKCON were allowed to wander, all exhibitors would have to be allowed to wander, resulting in chaos. Characterizing the problem in this manner results in a State interest in "order", which becomes compelling in that it is the only way to preserve the free speech rights of all exhibitors. While this approach is constitutionally sound,

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it does not reach the essential question of whether the State may burden the protected religious rights of ISKCON in furtherance of free speech rights for all exhibitors. This question was not raised in Evans and, in light of the prior authority, it seems clear that had it been raised it would have been necessary for the court to reach a different decision. As mentioned in the Bowen case (International Society for Krishna Consciousness v. Bowen (S. D. Ind. 1978), 456 F. Supp. 437), a regulation which is supported by a compelling State interest must still be narrowly drawn so as to be the least restrictive method to achieve the State's interest. Although it talked about "overbreadth", the Evans court did not apply the least restrictive test to the free exercise aspect of the case. It is my opinion that the decision in Evans does not represent the prevailing trend with respect to questions of free exercise of religion.

In consideration of the cases discussed and the substantial amount of authority from other jurisdictions (Clark v. Wisconsin State Fair Park Board (No. 78-C-373, Aug. 11, 1978, W.D. Wis.); Anderson v. Ionia Free Fair Association, Civ. No. G 78-569CA (W. D. Mich. Aug. 7, 1978); International Society for Krishna Consciousness v. Wetzel,

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Civ. No. 77-839 Phx-WPC (D. Ariz. Oct. 28, 1977); International Society for Krishna Consciousness v. Carey, No. 77-CV-3281 (N.D.N.Y. Aug. 30, 1977); International Society for Krishna Consciousness v. New Mexico State Fair Commissioners, No. 77-0568 Civil (D.N. Mex. April 28, 1977); Sweanson v. Meyers (D.C.Kan. 1978), 455 F. Supp. 88; International Society for Krishna Consciousness v. Collins (S. D. Tex. 1977), 452 F. Supp. 1007), it is my opinion that members of ISKCON may not be required to lease space from the Edwards County Fair in order to exercise their first amendment rights.

Based on the ISKCON cases previously discussed, there are certain permissible limitations. These are: (1) A regulation requiring ISKCON members to wear identification cards. (2) A regulation which prohibits members from conducting their activities in an area where there is a "captive" audience. This may include such places as ticket lines, refreshment areas and places where people are watching a show or performance. (3) A regulation which prohibits ISKCON members from conducting their activities in areas where crowd control is paramount, namely, entrances and exits. (4) A regulation which prohibits ISKCON members from touching any unconsenting person. (5) A regulation which limits the activities of ISKCON members to the normal operating hours of the fair and



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only in areas normally open to the public. It should be noted that any regulation of the type suggested should be narrowly drawn and should be applied in a non-discriminatory fashion.

Very truly yours,

A T T O R N E Y G E N E R A L