

To: School Administrators, NSAA Member Schools

From: Dr. Jim Tenopir, NSAA Executive Director (2004)
Rhonda Blanford-Green, NSAA Executive Director (Revised)

Date: February 10, 2014

RE: Public Prayer at Activities in which NSAA has Substantial Involvement

Enclosed in this mailing is a copy of the legal opinion rendered by legal counsel for the Nebraska School Activities Association regarding publicly led prayer as part of the activities in which the NSAA has substantial involvement, specifically NSAA subdistrict, district, playoff, and state competition. We have prepared this letter in consultation with legal counsel to provide member schools with the reason for requesting the legal opinion and an explanation of its application to NSAA-sponsored events and schools that host such events.

At different times during this school year, school administrators have contacted the NSAA office to seek input and direction about publicly led prayer at football playoff games and subdistrict and district tournaments—prayer that was led by clergy or other individuals over the PA system. These occurrences were at NSAA activities that were hosted at private schools. At least in one case, the administrator indicated that a number of his public school patrons had expressed questions and concerns.

Based on these inquiries, the NSAA sought the legal opinion of the Association's legal counsel as to whether the NSAA had increased legal liability or legal exposures if such publicly led prayer was offered at those activities in which the NSAA had substantial involvement, specifically NSAA subdistrict, district, playoff, and state competition.

The resulting legal opinion stated that the Nebraska School Activities Association, whether we want to accept the designation, is likely a putative state actor, and as such, "...may not allow prayer or other such content at its activities." That opinion states that this "...standard would apply regardless of whether the event is held on the grounds of a private or parochial school."

The Board of Directors discussed this matter at some length, with the realization that just raising the issue is likely to conjure up anti-American and anti-religious sentiment. However, the Board's discussion was not whether prayer was right or wrong, nor did the Board delve into the underlying pros and cons of separation of church and state. Rather,

the Board's overriding focus was on how the courts would rule on the matter of publicly led prayer as a part of NSAA-sponsored tournaments and playoffs and what NSAA's legal exposures would be if that were permitted to continue. Courts have not proven to be very sympathetic when public entities permit such religious expression, and it was deemed that the NSAA probably wasn't in very good standing should such a legal challenge face the Association.

Schools are asked to review and study the enclosed legal opinion and this explanatory letter. If there are questions about the legal opinion, please feel free to contact me. **By this letter the NSAA is requesting all member schools to refrain from publicly led prayer as part of NSAA-sponsored subdistrict, district, playoff, and state competitions (activities in which the NSAA has substantial involvement).** I would appreciate hearing from any school that has concerns about this request for voluntary compliance.

We would note that the request is not directed toward member school practices or policies related to team prayers (pre-game, during the contest or post-game), moments of silence, or other forms of personal expression. The United States Supreme Court has held that nothing in the Constitution prohibits any student from voluntarily praying at any time before, during or after a school day or school activity. Additionally, the request does not require the removal of any religious symbols from the school facilities at which NSAA-sponsored events are held, as it is clear that such symbols are not sponsored by nor do they bear the imprint of the NSAA.

Further, this request is not directed toward regular-season competition your school hosts. Unlike subdistrict, district, playoff, and state competition, the NSAA does not have substantial involvement in your regular season contests. The case probably could be made that NSAA would be implicated if there were a legal challenge of prayer at a local contest; however, the level of NSAA involvement is much greater at NSAA end-of-season events in which we dictate the competitors, the sites, the officials, and the procedures for dividing the game receipts—not to mention that NSAA requires a percentage of those gate receipts for an NSAA share and for catastrophic insurance.

It may be appropriate for you to check with your school's legal counsel to determine whether you have substantial legal exposures with publicly led prayer at your school for your regular season contests. What you choose to do with prayer at your events is your decision. Please understand that this request for voluntary compliance in limiting publicly led prayer is only for those subdistrict, district, playoff, and state contests for which the NSAA has substantial involvement.

If you have questions or comments, please feel free to share those with me.