

CRIMINAL LAW:  
DISTURBING THE PEACE:

The right of religious freedom may not be so construed to justify practices inconsistent with the good order, peace or safety of the state or with the rights of others. Whether the facts stated in your letter constitute a breach of the peace is a question of fact to be determined by all the evidence and circumstances

September 21, 1950

10-6-50

Honorable James L. Paul  
Prosecuting Attorney  
McDonald County  
Pineville, Missouri



Dear Sir:

I.

This will acknowledge receipt of your request for an official opinion of this department, which request reads as follows:

"Does a religious meeting which continues until 11:00, 12:00 or 1:00 o'clock at night and conducte in such a manner that loud and unusual noises emanate from their gathering constitute a peace disturbance to adjoining neighbors, and if so, who are the proper persons to make defendants thereto?"

Section 5 of Article 1 of the Constitution of Missouri(1945) provides as follows:

"Religious Freedom--Liberty of Conscience and Belief--Limitations.--That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience; that no person shall, on account of his religious persuasion or belief, be rendered ineligible to any public office of trust or profit in this state, be disqualified from testifying or serving as a juror, or be molested in his person or estate; but this section shall not be construed to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others."

Section 4636, R. S. Mo. 1939, provides as follows:

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"If any person or persons shall wilfully disturb the peace of any neighborhood, or of any family, or of any person, by loud and unusual noise or by offensive or indecent conversation, or by threatening, quarreling, challenging or fighting, every person so offending shall, upon conviction, be adjudged guilty of a misdemeanor."

The leading case on the question presented by your request is the case of City of Louisiana v. Bottoms, 300 S.W. 316. The St. Louis Court of Appeals in this case said, l.c. 317, 318:

"The alleged offense of which defendant stands convicted was committed during the course of a religious service, attended by 15 members of his little flock, commencing at 7 o'clock, and ending about 9:20 on the evening in question. The particular conduct of defendant said to have disturbed the peace of the good citizens of Louisiana was his shouting 'Amen,' 'Praise God,' and 'Glory Hallelujah,' at intervals throughout the service, in a tone of voice which was actually heard by certain persons at a distance of two blocks from the church, although those of the witnesses for the city who seemed to entertain the greatest respect for defendant's vocal powers were frankly of the opinion that his shouts could have been heard even at a distance of six blocks.

"It appears from plaintiff's own evidence that the particular meeting at which the disturbance was alleged to have occurred was graced by the presence of 100 or more white people, who stayed outside in their automobiles, and that on other similar occasions as many as 300 white people had attended. It is a further fact worthy of note that, eliminating the two police officers who testified in the case, of the remaining twelve witnesses called by the city, five of them were among those whose curiosity had prompted them to be present at this particular service.

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"The particular ordinance which defendant is

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charged to have violated provides that, if any person shall willfully disturb any lawful assembly of people by loud or indecent behavior, or shall give or make a false alarm of fire, or shall in the nighttime be guilty of loud and boisterous hallooing, quarreling, yelling, or screaming, by which the peace of the citizens may be disturbed, he shall be guilty of misdemeanor.

\* \* \* \* \*

"In general terms, a breach of the peace is a violation of public order and decorum, or a disturbance of the public tranquility, by any act or conduct inciting to violence, or tending to provoke or excite others to break the peace. City of St. Louis v. Slupsky, supra; City of Plattsburg v. Smarr (Mo. App.) 216 S.W. 538; 9 C.J. 386; 8 R.C.L. page 284, Sec. 305. The same authorities hold that by the term 'peace,' as used in such connection, is meant the tranquility enjoyed by the citizens of a municipality or community, where good order, which is the natural right of all persons in political society, reigns among its citizens. However, whether or not a given act or state of conduct amounts to a breach of the peace, depends upon the circumstances attending the act, such as the identity of the offending party, as well as of the complaining party, and the occasion therefor. State v. Sturges, 48 Mo. App. 263; State v. Riley (Mo. App.) 265 S.W. 874; State v. Lakey (Mo. App.) 275 S.W. 565.

"While fully appreciating the fact that the municipal assembly of plaintiff city, in the exercise of its powers, saw fit to particularize hallooing, yelling, and screaming as acts which, when done in the nighttime, might tend to disturb public tranquility, nevertheless we cannot bring ourselves to believe that the language of such ordinance, when strictly construed, can be held to contemplate and embrace conduct such as that of the defendant complained of in this action. We grant that to most people such manifestation of religious fervor might seem wholly unnecessary, if not ridiculous, and that to many it might indeed be offensive. But yet we are firmly of the opinion

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that the isolated instance of overzealous worship involved in this proceeding did not interfere with the usual good order which otherwise prevailed among the citizens of Louisiana, so as to justify the bringing of defendant before the bar of justice to answer therefor in a proceeding partaking of the nature of a criminal action. Indeed there was once a time in this country when a minister, whose voice would not have carried for a greater distance than two city blocks, would certainly have been accepted with greatly restrained enthusiasm, and most likely would have been regarded, even by his most faithful parishoners, as a downright failure in the ministry.

"It must be borne in mind that we do not arrive at our conclusion in this case from the false premise that the calling of defendant as a regularly ordained minister of the gospel entitled him to any rights not possessed by other citizens, or rendered him in any wise immune to the ordinary application of the law. We say this for the reason that, while our basic law provides that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience, yet the liberty of conscience so secured may not be so construed as to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace, or safety of the state, or with the rights of others. Article 2, Sec. 5, Const. Mo.; *City of St. Louis v. Hellscher*, 295 Mo. 293, 242 S.W. 652.

"In fact, there are cases in the books, though from other jurisdictions, which establish conclusively that the transgressor may not shield himself behind the vestments of the clergy when brought to task for the use of foul and obscene language in the pulpit. *Delk v. Commonwealth* 166 Ky. 39, 178 S.W. 1129, L.R.A. 1916B, 1117, Ann. Cas. 1917C, 884; *Holcombe v. State*, 5 Ga. App. 47, 62 S.E. 647. Likewise the beating of a drum upon the streets, no permit having been secured from the proper officer, has been held to be a breach of the peace, even though done in the performance of a religious service, when the statute expressly provided that it should be unlawful for any person to beat a drum, except by command of a military official having authority therefor. *State v. White*, 64 N.H. 48, 5 A. 828.

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"The case at bar, however, presents a far different situation. Here defendant stands charged, not with the use of obscene or indecent language, and not with having performed any act expressly prohibited by the ordinance, unless the latter be so construed as to comprehend and regulate the volume of sound that may be employed in a lawfully conducted church service, whether it be of a lowly negro congregation, housed in a temporary frame shack on the outskirts of the town, or of a fashionable white congregation, assembled together in a beautiful and costly edifice, erected in an exclusive residential district. That the city fathers, in the enactment of such ordinance, intended that it should be given such effect, we cannot believe.

"We have observed that the witnesses for the city complained in their testimony, not so much of the shouting of defendant during the single church service in question, as of the fact that they had been annoyed by similar occurrences over a long period of time. While such a case is not before us, it would seem at first blush that the condition complained of might be subject to be abated in a proper proceeding, and upon proper proof. As to the case at bar, however, we are constrained to hold as a matter of law that no breach of the peace, contemplated by the ordinance in question, was shown, from which it follows that defendant's requested instruction for a directed verdict in his favor at the close of all the evidence should have been given." (Underscoring ours)

The United States Court of Appeals in the case of *Minersville School District v. Gobitis et al.*, 108 F.2d 683 cites the *City of Louisiana v. Bottoms* case, *supra*, with approval and says, l.c. 688, 689;

"We have then to balance the two intangibles *stus* and *religio* and determine to which arm of the scale the weight of our decision must be added. In doing so, under our system of

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case law, we are entitled, or rather constrained, to examine the precedents. Cordozo, The Nature of The Judicial Process. All of these that are cited in either brief and many more besides are collected in four standard sources. 11 Am. Jur. pp. 1100-1104; 16 C.J.S. Constitutional Law, Sec. 206, pp. 599-603; American Digest System, Constitutional Law, 84; U.S.C.A. Constitution, Part 2, pp. 453-456; and see Association of American Law Schools Selected Essays on Constitutional Law, Vol. 2, pp. 1108-1175. Having examined these decided cases, we, again under our system, must search for a ration decidendi, and then include or exclude our own particular set of facts.

"As indicated by their decisions, our courts consider that the peace and good order of the community must prevail over conscience, (a) wherever its mental or physical health is affected, (b) wherever a violation of its sense of reverence makes a breach of the peace reasonably foreseeable, and (c) wherever the 'defense of the realm' is imperiled. \* \* \*"

You will note that the court in the City of Louisiana v. Bottoms case, supra, suggested that the condition complained of might be abated by an injunction suit.

Section 4636, supra, sets out three different grounds that would constitute a breach of the peace. The first ground, that is, "by loud and unusual noise" would be the only one that would apply in your case, in our opinion.

The proper persons to make defendants would be the persons you believe from the evidence are guilty of making the loud and unusual noises. We cannot say who should be made defendants because we do not have the facts. Your investigation of all the facts and circumstances will enable you to determine this question.

The Supreme Court of Missouri in the case of State v. Wymore, 132 S.W.2d. 979, l.c. 988, said:

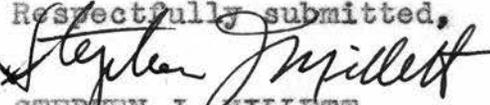
"Under the rule, if it is the statutory duty of a prosecuting attorney to commence and prosecute criminal actions, by necessary implication, he should qualify himself to determine, in the exercise of an honest discretion, if a prosecution should be commenced. The only way he can determine the question is to make an investigation

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of the facts and applicable law. If he determines there should be a prosecution and determines, in the exercise of an honest discretion, that he should proceed by information, also, by necessary implication, it is his duty to do whatever is necessary, under the law, to authorize the filing of the information. In making an investigation he qualifies himself to make and swear to the information."

CONCLUSION

It is the conclusion of this department that while our State Constitution provides that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences, yet this right shall not be so construed as to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others. Whether the facts stated in your letter constitute a breach of the peace, as contemplated by Section 4636 R. S. Mo. 1939, would depend upon all the circumstances attending said religious meeting, including whether or not the neighborhood, or any family or any persons have been disturbed in their peace. It is a matter within the discretion of the Prosecuting Attorney as to the form of action, if any, that may be filed and as to who shall be made defendants therein.

Respectfully submitted,  
  
STEPHEN J. MILLETT  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

SJM:mw