

May 21, 2020

***Via Regular Mail & Email (sertmer@co.winnebago.wi.us)***

Susan Ertmer  
County Clerk, Winnebago County  
112 Otter Avenue  
Oshkosh, WI 54901

**Re: Self-solemnizing marriages; request for records**

Ms. Ertmer:

We are writing to you as the legal representatives of the Center for Inquiry, Inc. (CFI), and American Atheists (AA). Our organizations are 501(c)(3) educational nonprofits that represent the interests of nonreligious Americans, defend the constitutionally mandated separation of church and state, and seek to ensure that legal discrimination against atheist, agnostic, and other nonreligious individuals is ended.

We received a complaint from a couple residing in Winnebago County who recently sought a wedding license from your office. When applying, Ms. Smith-Gregor asked the complainants for the name of the officiant for the wedding. The couple noted that they would (as allowed under Wis. Stat. § 765.16 (1m) (c)) be making a mutual declaration. Ms. Smith-Gregor replied that this option was not available to them as atheists, as it only applied to religious individuals. In order to permit their wedding to go ahead, the couple listed an officiant that your office found acceptable.

According to Ms. Smith-Gregor, her statement described the official interpretation of Wis. Stat. § 765.16 (1m) (c). We are therefore seeking to confirm that this is the way in which the law is applied in Winnebago County.

If this is the case, the county's application of the law is unconstitutional. It grants to religious individuals the right to solemnize their own marriages, and denies that right to otherwise identically situated non-religious people. As the Supreme Court has long held, "[t]he First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion." *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968).

Moreover, the Seventh Circuit has explicitly held that excluding secular celebrants from solemnizing marriages is impermissible under the constitution. In particular, the opinion emphasized that allowing individuals merely to claim a religious identity and so solemnize marriages, but to deny that right to nonreligious individuals who told the truth about that status was unacceptable. As that court noted, “[i]t is irrational to allow humanists to solemnize weddings if, and only if, they falsely declare they are a religion.” *Ctr. for Inquiry, Inc. v. Marion Circuit Court Clerk*, 758 F.3d 869, 875 (7th Cir. 2014).

Had this couple informed Ms. Smith-Gregor that they were members of a religious congregation, they would have been permitted to self-solemnize their marriage. Because they were honest, and described themselves as atheists, that option was refused to them.

We therefore demand that you clarify the interpretation of Wis. Stat. 765.16 (1m) (c) as including nonreligious individuals who wish to self-solemnize their marriage. Any other reading of the statute is unconstitutional.

### **Request for Records**

Pursuant to the Wisconsin Open Records Law, Wis. Stat. § 19.35(1)(a), we hereby request that copies of the following public records be produced by the Winnebago County Clerk via email to records@atheists.org or, if delivery via email is not practical, to American Atheists Legal Center, 718 7th St. NW, Washington, D.C. 20001.

1. All correspondence, manuals, rules, policies, procedures, or other guidance received from the Wisconsin Attorney General describing the current application of the Wisconsin marriage contract statute, Wis. Stat. § 765.16.
2. All manuals, rules, policies, procedures, or other guidance currently governing the Winnebago County Clerk’s implementation of the Wisconsin marriage contract statute, Wis. Stat. § 765.16.
3. All statements by the Winnebago County Clerk on or after January 1, 2019, regarding marriage licenses, officiants, celebrants, and self-solemnizing marriages.
4. All emails, faxes, letters, complaints, or other written correspondence sent or received by the Winnebago County Clerk’s office on or after January 1, 2019, regarding self-solemnizing marriages as provided for in Wis. Stat. § 765.16(1m)(c).

If there are any fees for copying these records, please inform us via email to records@atheists.org if the cost will exceed \$20.00. However, pursuant to Wis. Stat. §

19.35(3)(e), we request a waiver of all fees because the disclosure of the requested information is in the public interest.

If access to the records requested above will take longer than twenty business days, please inform us via email of when we should expect to receive the requested records.

If you should deny any or all of this request, please cite each specific exemption you believe justifies the refusal to release the information and notify us of the appeal procedures available under the law.

Thank you for your time and attention to this matter. Should you have any questions or concerns about the issues or requests above, please do not hesitate to contact us.

Yours,



Nicholas J. Little, Esq.  
Vice President and General Counsel, Legal Director  
Center for Inquiry, Inc.  
[nlittle@centerforinquiry.org](mailto:nlittle@centerforinquiry.org)



Geoffrey T. Blackwell, Esq.  
Litigation Counsel  
American Atheist Legal Center  
American Atheists, Inc.  
[legal@atheists.org](mailto:legal@atheists.org)

CC: Attorney General Josh Kaul (*via reg. mail*)