



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

March 13, 1997

The Honorable Michael P. Fleming  
Harris County Attorney  
1001 Preston, Suite 634  
Houston, Texas 77002

Letter Opinion No. 97-018

Re: Whether Harris County is authorized to install traffic fatality markers in the right-of-way of a county road located in a subdivision that has restrictive covenants limiting the display of signs, and related questions (ID# 39153)

Dear Mr. Fleming:

Your predecessor in office asked about the authority of Harris County (the "county") to install traffic fatality markers. First, he asked whether Harris County is authorized to install traffic fatality markers in the right-of-way of a county road located in a subdivision that has restrictive covenants limiting the display of signs. Second, he asked whether the fatality markers are permissible under chapter 544 of the Transportation Code. In addition, he asked whether the use of a Latin cross<sup>1</sup> or other religious symbol by the county as a traffic fatality marker violates the Establishment Clause of the First Amendment to the United States Constitution.

The Harris County Road Law, originally enacted in 1913,<sup>2</sup> was amended in 1985 to authorize the county to mark the location of traffic fatalities.<sup>3</sup> Section 1-B of the Harris County Road Law provides as follows:

To mark the location of a traffic accident that resulted in a fatality, the Commissioners Court of Harris County may design and place a marker or other sign in the right-of-way of:

- (1) a county road in the county; or
- (2) a state, city, or other public road in the county if the commissioners court has the written permission of the state agency, city, or other governmental entity that has primary responsibility for maintaining the road.

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<sup>1</sup>A Latin cross is "a figure . . . having a long upright shaft and a shorter cross bar traversing it above the middle." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 676 (1990).

<sup>2</sup>Act of March 5, 1913, 33d Leg., R.S., ch. 17, 1913 Tex. Gen. Laws 64, 64. The Harris County Road Law has been amended numerous times since 1913.

<sup>3</sup>Act of May 26, 1985, 69th Leg., R.S., ch. 572, 1985 Tex. Gen. Laws 2191, 2191.

Your predecessor informed us that in 1991, the Harris County Commissioners Court adopted a "policy for Traffic Fatality Markers." We review the specific details of that program in our discussion of his constitutional question.

**I. Whether Harris County's Statutory Authority to Install Fatality Markers is Limited by Subdivision Deed Restrictions or Chapter 544 of the Transportation Code.**

First, we consider whether the county is authorized to install traffic fatality markers in the right-of-way of a county road located in a subdivision that has restrictive covenants limiting the display of signs. Apparently, this question arises from the legal objections of a homeowners' association in a particular subdivision to a fatality marker beside a county road in the subdivision. We note that there appears to be a factual dispute regarding the location of the marker.<sup>4</sup> This opinion addresses the question in general terms. We do not determine whether the marker at issue is actually located within the county's right-of-way. Resolution of the factual dispute would require factual determinations and is therefore beyond the purview of the opinion process.

In support of the contention that the restrictive covenants do not restrict the county's authority to erect fatality markers in the right-of-way, your predecessor cited three cases, none of which is directly on point. As discussed below, we believe the rationale of these cases does not apply in the situation described in the request.

In the first case, *City of Houston v. Wynne*, 279 S.W. 916 (Tex. Civ. App.—Galveston 1925), writ ref'd per curiam, 281 S.W. 544 (Tex. 1926), the City of Houston condemned two lots in an addition in order to build a fire station. The lots were subject to the restriction that they only be used for residential purposes, and other lot owners in the addition brought suit to enjoin construction of the fire station. The court concluded that because the parties to the covenants must be charged with the awareness of the City of Houston's condemnation authority at the time the covenants were entered into, "all such parties contracted understanding that the restrictions entered into between them, which were binding as between themselves and all private parties, did in no manner affect the rights of the city to take such lots as it needed for a public fire station, by virtue of the condemnation statutes." 279 S.W. at 919.

In the second case, *City of River Oaks v. Moore*, 272 S.W.2d 389 (Tex. Civ. App.—Fort Worth 1954, writ ref'd n.r.e.), lot owners in an addition brought suit against the City of River Oaks, which had acquired a lot from a third party and had constructed water towers on the property. All lots in the addition were subject to a building restriction that the lots could be used only for residential purposes. The court concluded that the building restrictions were not binding on the state or a political subdivision of the state: "Restrictions and deeds to the Addition in question did not militate

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<sup>4</sup>A letter from the managing agent of the subdivision homeowners' association states, "It appears to us that the right-of-way . . . is generally the street itself and is generally 60 feet wide. Without obtaining a formal survey, it is not possible at this time to determine the exact location of the boundary between Restricted Landscape Reserve B and the . . . right-of-way. I do not believe that the County has the authority to place a marker in Restricted Reserve B which is owned by the homeowners association." Letter from David Regenbaum, President of Association Management, Inc., to The Honorable Dan Morales, Attorney General (Oct. 10, 1996). Your predecessor's letter does not suggest that the county asserts the right to place a marker outside of the county right-of-way.

against the power or authority of the City of River Oaks to take property within the Addition for proper public use.” *Id.* at 391 (citing *City of Houston v. Wynne*, 279 S.W. 916).

Finally, in *Palafox v. Boyd*, 400 S.W.2d 946 (Tex. Civ. App.—El Paso 1966, no writ), lot owners brought suit to prevent other lot owners from deeding a residential building lot to the City of El Paso to be used as a public roadway. Relying on *Wynne* and *City of River Oaks*, the court concluded that the dedication was lawful and that any restrictions on the use of the lot did not apply to the City of El Paso. The court also disagreed with the complaining landowners that *Wynne* and *City of River Oaks* could be distinguished because those cases involved condemnation as opposed to a conveyance by a private party to the city. After noting that *City of River Oaks* did not involve property acquired by condemnation, the court suggested that the city need not institute or threaten condemnation proceedings for condemnation authority to be dispositive, “the important thing being that the agencies involved have the authority to condemn.” *Id.* at 950 (quoting *El Paso County v. City of El Paso*, 357 S.W.2d 783 (Tex. Civ. App.—El Paso 1962, no writ)).

These cases deal with the application of deed restrictions to property that a governmental entity has acquired or condemned pursuant to its condemnation authority. The core rationale of these cases is that deed restrictions presuppose condemnation authority and, moreover, that condemnation authority, as a matter of public policy, must take precedence over deed restrictions. Your predecessor informed us that here the streets at issue were dedicated to the county during the subdivision process, accepted by the county, and entered on the Road Log of Harris County. He also stated that the county has not acquired or condemned lots that would have been subject to the deed restrictions.<sup>5</sup> Because the county obtained the right-of-way through dedication and has not acquired lots pursuant to its condemnation authority, we believe that the cases cited are inapposite and that the legal argument raised by the homeowners’ association misses the point. The relevant legal issue is not whether the deed restrictions apply to the county’s activities in the right-of-way but rather whether the dedication, on its own terms, authorizes the county to install the fatality markers.

Resolution of what we see as the relevant issue -- whether the dedication authorizes the county to install the fatality markers -- will ultimately depend upon the terms of the dedication under which the county obtained the right-of-way in question.<sup>6</sup> If the dedication conveys the fee as opposed to an easement, then the county is authorized to use the right-of-way for any purpose authorized by the Harris County Road Law, including the installation of fatality markers. If the dedication conveys a right-of-way over land for road purposes but does not convey the fee -- in other words if the dedication conveys an easement<sup>7</sup> -- the authority of the county to install fatality markers will depend

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<sup>5</sup>We assume the facts set forth in your predecessor’s letter are true.

<sup>6</sup>See generally Attorney General Opinion JM-1241 (1990) (authority of Harris County to remove shrubs in right-of-way depends upon terms of conveyance, condemnation proceeding judgment, or dedication under which county acquired particular right-of-way).

<sup>7</sup>See generally 43 TEX. JUR. 3D *Highways* § 116 (1985) (stating that as general rule, owner of land abutting street owns fee to center of thoroughfare, subject to easement existing in favor of public to right of passage and that public right is ordinarily but an easement whether roadway is dedicated by owner, established by prescription, or acquired by  
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upon such factors as whether the dedication preceded the enactment of section 1-B of the Harris County Road Law in 1985 and whether the dedication contains relevant reservations of right.<sup>8</sup> Given our inability to engage in fact-finding or make factual determinations, this office generally refrains from construing contracts, including easements, in attorney general opinions. Attorney General Opinion DM-420 (1996) at 9. Therefore, we are unable to definitively determine whether the county is authorized to install fatality markers in this particular right-of-way.

Your predecessor also asked about chapter 544 of the Transportation Code, which governs traffic-control devices. Apparently, the homeowners' association of the subdivision contends that a fatality marker is not a proper traffic-control sign or device under chapter 544. We believe that chapter 544 is inapplicable for two reasons. First, a fatality marker does not regulate the flow of traffic and is therefore not a traffic-control device as defined for purposes of chapter 544. See Transp. Code § 541.304 (defining "official traffic control device" to mean "a sign, signal, marking, or device that is . . . used to regulate, warn, or guide traffic"). Second, the Harris County Road Law gives the county specific authority to install traffic fatality markers. To the extent a more general statute like chapter 544 of the Transportation Code could be construed to preclude the county from installing fatality markers, we believe that the Harris County Road Law, the more specific statute, must prevail. See Gov't Code § 311.026 (Code Construction Act); see also Letter Opinion No. 93-47 (1993) (applying Gov't Code § 311.026 to conflict between Harris County Road Law and Local Gov't Code § 263.007). In sum, chapter 544 of the Transportation Code does not preclude the county from installing traffic fatality markers in the right-of-way of a county road.

## **II. Whether Use of a Latin Cross as a Traffic Fatality Marker by the County Violates the Establishment Clause of the First Amendment to the United States Constitution.**

Next, your predecessor asked whether the use of a Latin cross or other religious symbol as a traffic fatality marker by the county violates the Establishment Clause of the First Amendment to the United States Constitution, which provides that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I, cl. 1.<sup>9</sup> First, we begin with a brief description of the county's traffic fatality marker program.

The "Policy for Traffic Fatality Markers," adopted by the Harris County Commissioners Court in 1991, provides that a person who wishes to request a traffic fatality marker must apply to the commissioner of the precinct where the fatality occurred. In order to be eligible for a marker, the

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<sup>7</sup>(...continued)  
condemnation).

<sup>8</sup>Whether an easement acquired by a public body may be burdened with a particular use depends upon whether the grantor could have reasonably contemplated the use at the time the easement was granted. Easements are presumed to refer to the law in force at the time of execution. Attorney General Opinion DM-420 (1996) at 9 (citing authorities).

<sup>9</sup>This prohibition applies equally to states, and applies to the county as a political subdivision of the State of Texas and to the members of the Harris County Commissioners Court while functioning in their official capacity. *Greater Houston Chapter of the ACLU v. Eckels*, 589 F. Supp. 222, 232 (S.D. Tex. 1984), *appeal dismissed*, 755 F.2d 426 (5th Cir. 1985); see also *Everson v. Board of Educ.*, 330 U.S. 1, 15-16 (1947); L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 11-2, at 567-69 (1978).

deceased person must have been killed by a motor vehicle operated by a party under the influence of alcohol. The deceased person is not eligible if he or she was "the operator or a passenger in the vehicle being operated by a party under the influence of alcohol." The commissioner of the road precinct<sup>10</sup> in which the fatality occurred is responsible for investigating the request and for submitting it to the Harris County Commissioners Court, which will decide whether or not the request will be granted and where the marker will be placed. Each commissioner is "encouraged to use a standard marker of uniform size and shape made of redwood, cedar, or metal" and is responsible for the expense of purchasing and installing the markers in his or her precinct from the precinct budget. The person requesting the marker is responsible for maintaining it and may provide a name plate for the marker stating the name of the deceased, and dates of birth and death.

With respect to the marker at issue, your predecessor's letter states that the commissioner for the precinct received a document entitled "Victim Cross Request Information," which satisfied the criteria for the program. The letter continues as follows: "Installation of the marker was subsequently approved by the Commissioners Court, the requested cross was built by the county and installed in the county road right-of-way at the intersection where the accident occurred." It is not apparent from the request letter whether the Harris County Commissioners Court or the commissioner for the precinct at issue selected a Latin cross as the standard marker for the county or precinct or whether a Latin cross was used at the request of the victim's widow. Your predecessor also informed us that the cross at issue is 32 inches high, 22 inches wide, constructed of heavy steel, and painted white. The inscription on the plaque, presumably provided by the widow, reads "In loving memory of . . . born . . . and killed at this location . . . by a drunken driver."

We are not aware of any case law that addresses this specific situation, *i.e.*, whether a public entity violates the Establishment Clause by constructing and erecting a Latin cross to mark a traffic fatality. We have found a number of relevant United States Supreme Court opinions on religious displays and lower federal court cases regarding Establishment Clause challenges to Latin crosses erected and/or maintained by public entities in public parks and other publicly-owned places, which we hope will provide some guidance.<sup>11</sup>

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<sup>10</sup>Pursuant to section 5 of the Harris County Road Law, each commissioner is the ex-officio precinct road supervisor in his or her precinct. Act of March 5, 1913, 33d Leg., R.S., ch. 17, § 5, 1913 Tex. Gen. Laws 64, 65.

<sup>11</sup>See *Separation of Church and State Comm. v. City of Eugene*, 93 F.3d 617 (9th Cir. 1996); *Gonzales v. North Township*, 4 F.3d 1412 (7th Cir. 1993); *ACLU v. Rabun County Chamber of Commerce*, 698 F.2d 1098 (11th Cir. 1983); *Mendelson v. City of St. Cloud*, 719 F. Supp. 1065 (M.D. Fla. 1989); *Jewish War Veterans v. United States*, 695 F. Supp. 3 (D.D.C. 1988); *Greater Houston Chapter of the ACLU*, 589 F. Supp. 222; see also *Carpenter v. City and County of San Francisco*, 803 F. Supp. 337 (N.D. Cal. 1992), *rev'd*, 93 F.3d 627 (9th Cir. 1996).

The foregoing cases involve Establishment Clause challenges to crosses erected and/or maintained to some degree by a public entity on public property. *Capital Square Review and Advisory Bd. v. Pinette*,—U.S.—, 115 S. Ct. 2440 (1995), holding that the State of Ohio did not violate the Establishment Clause by permitting the Ku Klux Klan to display a cross on the grounds of the state capitol, involves the display of a cross by a private party in a traditional public forum as expressive speech and is not considered here. We also do not address cases involving challenges to crosses in the context of seasonal holiday displays or governmental seals incorporating crosses, as the facts of these cases are less similar to the circumstances here. See, *e.g.*, *Murray v. City of Austin*, 947 F.2d 147 (5th Cir. 1991) (holding that city insignia that

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Traditionally, the Court has applied the three-prong test set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), to determine whether a government practice violates the Establishment Clause. To satisfy the Establishment Clause, a government practice must (1) reflect a clearly secular purpose; (2) have a primary effect that neither advances nor inhibits religion; and (3) avoid excessive government entanglement with religion. More recently in Establishment Clause cases, especially those involving religious displays, the Court has paid particular concern to whether a governmental practice has the effect of “endorsing” religion. See, e.g., *Lynch v. Donnelly*, 465 U.S. 668, 687-94 (1984) (O’Connor, J., concurring); *County of Allegheny v. ACLU*, 492 U.S. 573, 592-97 (1989) (Blackmun, J., concurring); *Board of Educ. of Westside Community Sch. v. Mergens*, 496 U.S. 226, 249-52 (1990) (plurality opinion).

While recognizing the United States Supreme Court’s recent retreat from *Lemon*, the lower federal court decisions addressing Establishment Clause challenges to Latin crosses in public parks and other publicly-owned places conclude that challenges to religious displays must be analyzed within the *Lemon* framework.<sup>12</sup> As noted in these cases, the Latin cross is an unmistakable symbol of Christianity.<sup>13</sup> In each case, the display of a Latin cross is held to violate the Establishment Clause. Although the facts of these cases vary, each in the court concludes that the cross at issue was not erected for a secular purpose and/or that the effect of the cross is to advance or endorse Christianity.<sup>14</sup>

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<sup>11</sup>(...continued)

incorporated cross did not violate Establishment Clause); *Libin v. Town of Greenwich*, 625 F. Supp. 393 (D. Conn. 1985) (enjoining city from including illuminated cross in seasonal display).

<sup>12</sup>See, e.g., *Separation of Church and State Comm.*, 93 F.3d at 623 (noting that Supreme Court has consistently applied *Lemon* test or variation on *Lemon* test to cases involving religious displays); *Gonzales*, 4 F.3d at 1417-18 (“Although the test is much maligned, the Supreme Court recently reminded us that *Lemon* is controlling precedent and should be the framework used by courts when reviewing Establishment Clause challenges.”).

<sup>13</sup>See, e.g., *Separation of Church and State Comm.*, 93 F.3d at 620 (“There is no question that the Latin cross is a symbol of Christianity.”); *Gonzales*, 4 F.3d at 1418 (Latin cross is unmistakable symbol of Christianity); *Mendelson*, 719 F. Supp. at 1069 (“The Latin cross is unmistakably a universal symbol of Christianity.”).

<sup>14</sup>See *Separation of Church and State Comm.*, 93 F.3d 617 (51-foot Latin cross located in a public park clearly represents governmental endorsement of Christianity, may reasonably be perceived as providing official approval of one religious faith over others); *Gonzales*, 4 F.3d 1412 (18-foot crucifix in public park erected by private group as war memorial and decided to township was not intended to and does not now serve secular purpose, conveys primary message of township’s endorsement of Christianity and does not convey any secular message); *ACLU v. Rabun County Chamber of Commerce*, 698 F.2d 1098 (35-foot cross maintained on state park did not serve secular purpose); *Mendelson*, 719 F. Supp. 1065 (display of Latin cross on publicly owned water tower did not have secular purpose, had effect of advancing Christianity, and entangled city in religion because city paid cost of illuminating cross); *Jewish War Veterans*, 695 F. Supp. at 14 (65-foot cross located on federal military base held to fail secular effect prong of *Lemon* test “because it conveys a message of endorsement of Christianity”); *Greater Houston Chapter of the ACLU*, 589 F. Supp. 222 (construction and maintenance of three Latin crosses and Star of David in public park by county commissioner did not have secular purpose and had effect of advancing religion); see also *Carpenter*, 803 F. Supp. 337 (holding that city’s ownership and display of Latin cross in public park did not violate California or United States Constitutions), *rev’d*, 93 F.2d 627 (concluding that city’s ownership and display of Latin cross in public park violates California Constitution, not reaching federal question).

As these cases demonstrate, Establishment Clause challenges to religious displays require careful scrutiny of the circumstances and context in which the religious symbols are displayed. The analysis of such challenges is fact-intensive. Because the determination whether the installation of a Latin cross by a county as a traffic fatality marker violates the Establishment Clause would require resolution of questions of fact, it is ultimately beyond the purview of an attorney general opinion. We believe, however, that the cases involving Latin crosses in public parks and other publicly-owned places are distinguishable and offer these thoughts about what factors a court might take into consideration if faced with a challenge to such a traffic fatality marker.

In each of the cases involving Latin crosses in public parks and other publicly-owned places, there was clear evidence that the crosses, even those used as war memorials, were erected for religious purposes.<sup>15</sup> In this case, it appears that the county's traffic fatality marker program, which makes no mention of Latin crosses, has a secular purpose -- to deter drunk driving. A court would also have to consider, however, the purpose of using a Latin cross to mark the fatality at issue. We have no information regarding the decision to select a Latin cross to mark this particular traffic fatality. A court would consider whether the decision to select the cross was made by the Harris County Commissioners Court, the commissioner of the precinct, or the victim's widow as well as the reason for the decision. Only a trier of fact can determine whether the cross was selected as a nonsectarian symbol of death or whether it was selected based on the beliefs of the decision-makers, the beliefs of the majority of the community, or the faith of the deceased or his widow.

Similarly, we believe the question whether the primary effect of the cross is to advance or endorse Christianity can only be resolved by a court. A trier of fact would consider evidence regarding the reaction of passersby to the cross -- is the cross perceived as merely a nonsectarian indication that a death has occurred at the site or is it perceived as a sectarian Christian symbol? While large Latin crosses have been held to symbolize Christianity,<sup>16</sup> it may be the case that a small cross on a roadside does not have the same sectarian connotations.

In addition, a court might also consider the extent to which a passerby would associate the cross with the county. Unlike the Latin crosses in public parks and other publicly-owned places that have been declared unconstitutional, it is not obvious that this cross was erected by the county or is located in the county right-of-way. The plaque on the marker at issue, which states "In loving memory of . . . ," suggests that the marker was erected by the family members or friends of the deceased. While the cross is located in the county right-of-way, this is not obvious to a passerby and it is very likely that a passerby would assume that the cross is located on private property. In sum, based on the cross itself and its location, a passerby would have no reason to suspect that the cross

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<sup>15</sup>See, e.g., *Gonzales*, 4 F.3d at 1421 (cross erected by Roman Catholic fraternal organization to spread Christian message); *ACLU v. Rabun County Chamber of Commerce*, 698 F.2d at 1111 (cross construction schedule required completion in order for dedication at Easter sunrise service); *Greater Houston Chapter of the ACLU*, 589 F. Supp. at 233-34 (cross erected by county commissioner for religious purposes).

<sup>16</sup>See cases cited *supra* notes 13-14.

was constructed or installed by the county. For this reason, it seems unlikely that a passerby would perceive the cross as a county endorsement of Christianity.<sup>17</sup>

It seems very likely that a court would conclude that the cross at issue does not impermissibly entangle the county with religion. There is no suggestion that religious authorities were involved in the selection, construction, or installation of the cross.<sup>18</sup> Presumably the county cost to construct and install the cross was de minimis.<sup>19</sup> The deceased's widow is responsible for maintaining the cross.<sup>20</sup> It is not apparent from your predecessor's query or the homeowners' association letter that the cross at issue has generated religion-based political division.<sup>21</sup>

We also caution that your predecessor's question and the foregoing analysis focus on the use of a Latin cross or any other religious symbol as a traffic fatality marker in the singular. Assuming that the Latin cross has been adopted as a uniform traffic fatality marker in the county or a precinct, it is very likely that a litigant would challenge the traffic fatality marker program on a county-wide or precinct-wide basis. In that case, the analysis would be somewhat different. The precinct commissioner or Harris County Commissioners Court's reasons for selecting the Latin cross as a uniform symbol would be considered. Furthermore, the public perception of a proliferation of Latin crosses in the county right-of-way in streets and roads across the county might be different. A court would also consider the sensibilities of non-Christians who might wish to request a marker. Finally, with respect to entanglement, the expense involved in constructing and erecting multiple crosses would be considered, as would any religion-based political division generated by the program.

In sum, we believe that a small Latin cross used as traffic fatality marker and installed in the county right-of-way by the county is distinguishable from the large Latin crosses located in public parks and other publicly-owned places that have been held to violate the Establishment Clause.

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<sup>17</sup>By contrast, a privately-owned cross on a city water tower located next to the city seal and a city message of welcome was held to have the effect of endorsing Christianity because there was no disclaimer disassociating the cross from the city. *Mendelson*, 719 F. Supp. at 1070-71.

<sup>18</sup>*See, e.g., Greater Houston Chapter of the ACLU*, 589 F. Supp. at 236 (no entanglement where no evidence that county commissioner contacted church authorities concerning content or design of symbols); *Gonzales*, 4 F.3d at 1418 (no entanglement where there was no evidence of contact between township and religious group regarding design of crucifix).

<sup>19</sup>*See, e.g., Greater Houston Chapter of the ACLU*, 589 F. Supp. at 236 n.17 (noting that United States Supreme Court concluded that minor expenditures on city-owned creche did not constitute excessive entanglement).

<sup>20</sup>As discussed above, it is not clear whether the county owns the right-of-way in fee simple or merely has an easement over the right-of-way for road purposes. A court might find this distinction relevant in analyzing the extent to which the fatality marker entangles the county with religion. *See Mendelson*, 719 F. Supp. at 1071 (even if private persons paid for cost of maintaining cross, Establishment Clause violated if government property used to support particular religion). We also note that if the right-of-way is owned by private property owners, they may have an argument that the traffic fatality marker program violates their constitutionally guaranteed rights to free speech and the free exercise of religion by requiring them to facilitate religious speech against their wishes.

<sup>21</sup>*See Jewish War Veterans*, 695 F. Supp. at 14 (opining that government act more likely to be found unconstitutional if it generates religion-based political division, noting that cross at issue caused polarization of community).



Although we believe that the use of a small Latin cross as a traffic fatality marker is less problematic, the determination whether the installation of Latin crosses by a county for this purpose violates the Establishment Clause would require a factual inquiry and is therefore beyond the purview of this office. Similarly, we are unable to determine the permissibility of the use of any other religious symbol as a traffic fatality marker.

**S U M M A R Y**

Whether Harris County is authorized to install traffic fatality markers in the right-of-way of a county road in a particular subdivision depends upon the terms of the dedication under which the county obtained the right-of-way. Chapter 544 of the Transportation Code does not preclude the county from installing traffic fatality markers in the right-of-way of a county road.

A small Latin cross used as traffic fatality marker and installed in the county right-of-way by the county is distinguishable from the large Latin crosses located in public parks and other publicly-owned places that have been held to violate the Establishment Clause of the First Amendment to the United States Constitution. Although the use of a small Latin cross as a traffic fatality marker is less problematic, the determination whether the installation of Latin crosses or other religious symbols by a county for this purpose violates the Establishment Clause would require a factual inquiry and is therefore beyond the purview of this office.

Yours very truly,



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