By U.S. Mail
Winfield Iobst, Mayor
Borough of Emmaus
28 South 4th Street
Emmaus, PA 18049

Amy Resh, Library Director
Emmaus Public Library
11 East Main Street
Emmau, PA 18049

Re: Nativity display at public library

Dear Mr. Iobst and Ms. Resh:

We have received a complaint about a nativity display owned by the Borough of Emmaus and displayed at the Emmaus public library. The nativity scene is displayed by itself on government property. We write to inform you that this display violates the Establishment Clause of the First Amendment to the U.S. Constitution, and to ask that you refrain from displaying the nativity scene on public property in the future.


Accordingly, federal courts—including the U.S. Supreme Court—have ruled that the solitary display of a nativity scene violates the Establishment Clause. See, e.g., County of Allegheny v. ACLU, 492 U.S. 573, 590 (1989); ACLU v. City of Birmingham, 791 F.2d 1561, 1567 (6th Cir. 1986); see also Kaplan v. City of Burlington, 891 F.2d 1024, 1028-31 (2d Cir. 1989) (solitary menorah display unconstitutional).

A public entity may display a religious symbol, if at all, only when the symbol is integrated into a broader display that, taken together, communicates a secular
message to viewers. See, e.g., Allegheny, 492 U.S. at 601-02, 620 (striking down solitary crèche display while upholding larger, secular display that included menorah); Lynch v. Donnelly, 465 U.S. 668, 671 (1984) (upholding display that incorporated “a Santa Claus house, reindeer pulling Santa’s sleigh, candy-striped poles, a Christmas tree, carolers, cutout figures representing such characters as a clown, an elephant and a teddy bear, hundreds of colored lights, a large banner that read[ ] ‘Seasons Greetings,’ and the crèche”). The presence of secular symbols cannot justify the government’s display of a religious symbol, however, when the religious symbol dominates the display or when the secular and religious symbols are far apart or are otherwise not part of a unitary display. See Allegheny, 492 U.S. at 581, 598 (display of crèche in central spot in courthouse was not rendered constitutional by display of secular items in other parts of courthouse); ACLU v. Schundler, 104 F.3d 1435, 1446 (3d Cir. 1997); American Jewish Cong. v. City of Chicago, 827 F.2d 120, 122-23 (7th Cir. 1987) (enjoining display of crèche in city-hall lobby that also contained eight wreaths, an eighteen-foot Christmas tree, a mechanical Santa Claus, two reindeer, a sleigh, and several banners, where the secular items were in different parts of the lobby and not part of a unified display with the crèche); Amancio v. Town of Somerset, 28 F. Supp. 2d 677, 681 (D. Mass. 1998) (display of crèche, Christmas tree, and snowman held unconstitutional where crèche was central element of display).

Please immediately remove the nativity display and do not put it up again in the future. We would appreciate a response to this letter within thirty days that advises us how you plan to proceed. If you have any questions, you may contact Ian Smith at (202) 466-3234 or ismith@au.org.

Sincerely,

[Signature]

Richard B. Katskee, Legal Director
Ian Smith, Staff Attorney