



TOURISM, ARTS AND HERITAGE CABINET

STEVEN L. BESHEAR
GOVERNOR

2400 CAPITAL PLAZA TOWER
500 MERO STREET
FRANKFORT, KENTUCKY 40601
502-564-4270 – OFFICE
502-564-1512 - FAX

LINDY CASEBIER
DEPUTY SECRETARY

BOB STEWART
SECRETARY

MATT SAWYERS
DEPUTY SECRETARY

December 10, 2014

Sent by email and First Class Mail

James E. Parsons, Esq.
Taft, Stettinius & Hollister, LLC
1717 Dixie Highway, Suite 901
Covington, Kentucky 41011-4704

Dear Jim:

I am writing to re-affirm the Commonwealth of Kentucky's position with regard to the application of Ark Encounter, LLC for incentives under the Tourism Development Act.

As you know, since the filing of the original incentive application in 2010, we have strongly supported this project, believing it to be a tourism attraction based on biblical themes that would create significant jobs for the community. The Tourism Development Finance Authority gave final approval of Ark Encounter's original application on May 19, 2011 for a large, full-scale theme park. Construction of the park was postponed due to delays the applicant experienced in raising the necessary private funding. Near the end of the initial three-year construction term provided for in its original Tourism Development Agreement, Ark Encounter withdrew its initial application and filed a new application for a smaller Phase One, consisting of a full scale replica of Noah's Ark. At that time, Ark Encounter assured the Commonwealth that the project would remain a theme park and tourist attraction depicting how the Ark could have been built and how Noah, his family and multiple animals could survive for 376 days of a worldwide flood.

However, based on various postings on the Answers in Genesis (AIG) and Ark Encounter websites, reports from Ark Encounter investor meetings and our correspondence, it is readily apparent that the project has evolved from a tourism attraction to an extension of AIG's ministry that will no longer permit the Commonwealth to grant the project tourism development incentives. There are two reasons for this conclusion: 1) the Commonwealth will not grant incentives to a company that intends to discriminate in hiring its employees based on religion; and 2) It is a violation of the Constitution for the Commonwealth's incentives to be used to advance religion.

The first reason the Commonwealth can no longer grant incentives to this Project is the applicant's changed position as it relates to the hiring of employees. In its original Tourism Development Agreement, Ark Encounter, LLC expressly agreed not to discriminate in hiring based on religion. However, it is now the applicant's stated intention to discriminate in the hiring of employees for the Project based on religion. This intent was recently reiterated in a November 19 fundraising letter for the Ark Project from Mr. Ken Ham, President and CEO of AIG, and you also confirmed that intention in our November 24th meeting and in your letter of December 8, 2014. The Commonwealth's position hasn't changed. The applicant's

position has changed. The Commonwealth has not and does not provide incentives to any company that discriminates on the basis of religion and will not make an exception for Ark Encounter, LLC.

Ark Encounter LLC predicates its position that it can discriminate in hiring based on its status as a ministry. This, too, represents a substantial change in position from the time when the project was originally approved for incentives in 2011, predicated on assurances from Ark Encounter that this project was strictly a tourist attraction. While those same assurances were reiterated when the new application was filed, the facts now clearly indicate otherwise.

On February 27, 2014, in a press conference streamed live from the Creation Museum, Mr. Ham described how the Ark was designed to further AIG's evangelical mission. He has stated that he wanted people to come and have an encounter with Noah's Ark, but at the same time to have an encounter with the Lord Jesus Christ. Patrick Marsh, AIG's Director of Museum Design, in describing the Ark's design has said that the Ark Encounter will present an evangelical, yet entertaining, Gospel message, and that the project is really about evangelism to the unchurched. At the Hammer & Peg ceremony on May 1, 2014, supporters were reminded that Deck 3 of the Ark would contain the Christ Theater and referred to Ark Encounter as "this Gospel proclaiming project that will stand as a monument to biblical authority, reminding people of God's judgment on sin as well as His great mercy." One speaker proclaimed "that the new Ark Encounter would save people to Jesus just as the original Ark saved Noah, his family and the animals." In addition to these statements, the current design schematic for the Ark featured on its webpage shows the Christ Theater and a room called, "Why the Bible is True" as prominent features on the third floor. In the November 19 fundraising letter, Mr. Ham characterized the purpose of the Ark and its exhibits as a mechanism to "point people to God's Word and the gospel", and stated his belief that "it is going to be one of the most effective evangelical outreaches of our era."

Certainly, Ark Encounter has every right to change the nature of the project from a tourism attraction to a ministry. However, state tourism tax incentives cannot be used to fund religious indoctrination or otherwise be used to advance religion. The use of state incentives in this way violates the Separation of Church and State provisions of the Constitution and is therefore impermissible.

Therefore, for these reasons this letter is to advise you that the Commonwealth will take no further action on Ark Encounter's application.

Even though the Commonwealth cannot support this new ministry with Tourism Development incentives, we acknowledge and appreciate your client's plans to develop this project in Kentucky, regardless of the availability of incentives. The investment is significant and will generate jobs and visitor spending that will be welcomed in the local economy, just as the Creation Museum has done. We wish you well with this and your other ventures in Kentucky.

Sincerely,



Bob Stewart
Secretary

cc: Tourism Development Finance Authority Members