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Free Speech on Campus

- The “Zone” Misconception
- Content-Neutral Control
- Offensive Speech

The whole campus is a free-speech area, despite the common misnomer often applied to Bosco Student Plaza indicating it is the “free speech zone.” The University cannot restrict speech, including demonstrations, to any particular areas of campus. That is because we are a public campus where people are generally free to travel around and express themselves. The University has certain outdoor areas on campus to which literature distribution is limited and sometimes those are also referred to as “free-speech zones.” The purpose of that limitation is primarily to control litter, and it is imposed without regard to the content of the literature (*i.e.*, the rule is content-neutral). In addition, groups and individuals cannot be required to register with our police or seek permission from anyone else before they are allowed to speak or have a demonstration outdoors on campus.

The law allows the government (which includes the University and its officials) to impose reasonable time, place and manner restrictions that are content-neutral. Litter control is one example. Another is our Electronically Amplified Sound policy, which has content-neutral rules to prevent the disturbance of the regular academic or administrative functions of the University. And if behavior crosses the line into criminal conduct, such as battery, criminal threats, blocking traffic, and so on, the police can step in.

What about controversial or offending speech? What if the speaker is shouting derogatory comments at people walking by? When does speech cross the line and create a discriminatory environment? These are questions that are raised nearly every time there is a demonstration on campus where inflammatory remarks or displays are made or a controversial subject is being discussed. The answer in each situation depends on specifics.

As a general rule, there is no right to not be offended. Controversial speech and robust debate are expected and valued on college campuses and in our society. Moreover, the right to engage in such expression is a highly valued and protected right under our laws. As the U.S. Supreme Court stated in 1989 in *Texas v. Johnson*: “If there is a bedrock principle underlying the First Amendment, it is that government may not prohibit the expression of an idea simply because it finds it offensive or disagreeable.” Indeed, the courts point out that offensive speech and unpopular viewpoints are what need legal protection the most, because that is the type of expression people are most likely to ask the government to shut down or that the government itself might want to shut down. Free speech protections are in place under the law for good reason. If the government started shutting down speech that is offensive to some, it would end up shutting down all speech, because virtually everything can be offensive to someone.

If speakers are addressing the crowd or individuals who directly engage them, or are directing comments indiscriminately at numerous people (calling them “sinner” or “fornicator” for example), then free speech protection still applies. When expression amounts to “fighting words” (in-your-face abusive speech that tends to incite immediate violence) or unlawful discrimination, that expression can be and is prohibited based on its content.

Sometimes there is a fine line between protected free expression and unprotected expression such as “fighting words” or discrimination. The University vigorously enforces its anti-discrimination policy (PPM 3010), which very specifically defines discrimination according to the law, and navigates that fine line to protect free speech and due process rights while also ensuring that our campus community is free from unlawful discrimination. But beyond that line the University and its officials generally



Free Speech on Campus continued

cannot otherwise restrict or “chill” speech based on content, even if highly offensive to some.

Of course, the University has a right to state its own views and promote its own values. This can include condemning the views and actions of others, so long as it does not interfere with their right to express ideas. The University may not inhibit free speech by making direct or implicit

threats of sanctions for engaging in protected speech, even if it does so politely. The quest for civility, with all of its good intentions, is fraught with perils, including the risk of reacting in ways that could violate the law. What the University can do — and does — is encourage open and robust discourse, promote inclusive values, and lead by example.

Featured FAQ

Q: Are my communications with the Office of General Counsel confidential?

A: The attorney/client privilege exists between our office and the University. The client holds the privilege, and can waive the privilege by sharing the communication with anyone outside the attorney/client relationship. Since administrators acting as agents of the University communicate with our office regarding legal matters of the University, those communications generally are confidential and privileged attorney-client communications as to entities outside the University. Privileged advice from the Office of General Counsel should be maintained in confidence and not shared with anyone who is not another officer of the University with a need to know. In order not to waive the privilege, you must not forward emails with advice from the Office of General Counsel or share other legal communications with third parties outside of the University, or to individuals within the University who are not relevant administrators. Such actions may waive any privilege that would have been attached to the advice.

Visit our website:

k-state.edu/generalcounsel

Our website gives an introduction to the services we provide and addresses frequently asked questions. It also houses a list of resources for easy access to laws and policies applicable to University operations.

’Tis the Season

It’s campaign season again, and this time there’s a presidential election to add to the excitement and intensity.

It’s everyone’s right to speak out on matters of public concern and to fully participate in the political process, including election campaigns. Individuals do not lose those rights when they accept employment at a state agency, such as Kansas State University. But we State of Kansas employees are subject to reasonable prohibitions on using public property or facilities, the name of a public institution, government time, or the influence and authority we have because of our positions, to support partisan causes or candidates for elected office. The rules take into account individual rights as well as the rights of the diverse tax-paying public that supports our University. The key is to maintain a clear separation between individuals as private citizens and individuals as state employees.

| Examples of can-do’s: | | Examples of can’t-do’s: | |
|-----------------------|--|-------------------------|--|
| √ | campaign for a candidate | × | use ksu.edu email to support a candidate or cause |
| √ | contribute to a campaign | × | solicit funds from subordinates |
| √ | have a yard sign | × | campaign on state property |
| √ | write a letter to the editor | × | use your university title |
| √ | have a bumper sticker on a private car | × | use a university website or social media account to support a candidate or cause |

Political activities rules, including election campaign rules, applicable to state employees and others are set out in state law, Kansas Board of Regents policies and K-State policies. They are gathered for convenient reference at k-state.edu/govrelations/university/PAP.html. Please take advantage of this useful resource, and feel free to contact the Office of Governmental Relations, kstategr@k-state.edu, or the Office of General Counsel, attys@k-state.edu, with any questions.

About this Publication:

This newsletter is designed to serve as a practical informational tool, bringing you topics of interest and practical tips. It should not be relied on as a substitute for legal advice. Laws, regulations and policies change frequently, and legal advice requires careful consideration and application of all relevant facts. If you have legal questions or need legal advice concerning any University matter, please contact the Office of General Counsel directly at 785-532-5730 or attys@k-state.edu.