



KANSAS JUSTICE INSTITUTE

April 20, 2020

Sent via Electronic Mail Only, through counsel (pat@bbwwlaw.com)

Jackie Patterson, RN, BSN
Director, Osage County Health Department
103 E 9th Street
Lyndon, Kansas 66451

Dear Director Patterson,

Kansas Justice Institute¹ represents an Osage County resident injured by the Osage County Health Department's decision to prohibit parades, joyriding and cruising. This letter is sent in a good faith. We appreciate your dedication to public health. Your work as a public health director is invaluable and noble, especially during a pandemic, and we are confident this matter will be resolved quickly, efficiently, and amicably.

COVID-19 has caused tremendous stress and anxiety. "Fear and anxiety about a disease can be overwhelming and cause strong emotions in adults and children. Coping with stress will make you, the people you care about, and your community stronger." Center for Disease Control and Prevention, Coronavirus Disease 2019: "Outbreaks can be stressful."²

For that very reason, car parades have become increasingly popular. See Katherine Rosenberg-Douglas, *Southwest Side school holds a car parade – a popular way of overcoming isolation amid coronavirus social distancing*, Chicago Tribune (April 2, 2020);³ Melissa Locker, *These Socially Distant But Still Social People Are Throwing Mini Parades to Lift Spirits Amid Coronavirus*, Time Magazine (March 24, 2020).⁴

¹ Kansas Justice Institute is a non-profit, public-interest litigation firm committed to protecting individual liberty and the constitutional rights of all Kansans.

² Accessible at <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/managing-stress-anxiety.html>

³ Accessible at <https://www.chicagotribune.com/coronavirus/ct-coronavirus-car-parades-john-dore-elementary-20200402-nvip3shntfhxqcqbc047ap2zfm-story.html>

⁴ Accessible at <https://time.com/5808848/teacher-parade-coronavirus/>

As of April 18, 2020, there are four COVID-19 cases⁵ in Osage County, out of the roughly 17,000 residents.⁶

Nonetheless, the Osage County Health Department cancelled an Easter Parade because it deemed the parade to be “in violation of the stay at home orders.” City of Overbook, Kansas, Facebook post (April 10, 2020 at 3:59 p.m.). According to one local chief of police, “the Osage County Health Department has put a stop on the Easter Parade tomorrow morning. The parade is in violation of the stay at home order.” Chief of Police, Facebook post (April 10, 2020 at 4:06 p.m.)

On April 14, 2020, at 3:38, the Osage County Health Department, through you, confirmed its county-wide ban: “There have been several cruise nights and parades that have been planned recently due to the COVID-19 pandemic and the Stay-At-Home rule. However, CDC and KDHE have stated that these activities do not fall under the exemption of outdoor activities as stated below: engaging in an outdoor activity does not include: joyriding, cruising, or parades. We understand this time is difficult, and puts strain on everyone. Our county has done a wonderful job pulling together and keeping its citizens safe and healthy. Please, let’s keep it that way! No parades or cruises! #OsageCountyStrong” (cleaned up). Osage County Health Department, Facebook post (April 14, 3:38 p.m.). If there is any other order issued by Osage County Health Department, in connection with a county-wide ban on parades, joyriding, or cruising, or any other document you are relying on to justify the county-wide ban, please provide it pursuant to KORA. Pursuant to KORA, please provide all COVID-19 related orders issued by you and/or the County Health Department.

As we indicated in our April 16, 2020 letter to you, a county-wide ban on all parades, joyriding, and cruising, regardless of the lack of coordination between, number of, and social distancing by, the participants is unconstitutional. According to the order, the ban is indefinite, and the terms are undefined. As written, a family driving around Osage County looking at the scenery, or driving in a car parade, would be violating the Osage County Health Department’s order, even if the family didn’t exit their car or otherwise congregate with, or near others.

Courts have been crystal clear for almost a century: any prior restraint of expression and speech bears a heavy presumption of invalidity. The wholesale ban implicates the right to freely speak, assemble, and travel, among other things not discussed here. This analysis was buttressed by a federal court in Wichita, Kansas, just this past Saturday. In that case, the court issued an emergency temporary restraining order against the Governor, in her official capacity, involving social distancing and constitutional rights. *First Baptist Church v. Governor Laura Kelly*, No. 6:20-cv-01102-JWB-GEB (D. Kan., Apr. 18, 2020) (Doc. 14).

⁵ Accessible at <https://www.coronavirus.kdheks.gov/160/COVID-19-in-Kansas>

⁶ Accessible at <http://osageco.org/main/about-osage-county/demographics>

Please immediately advise whether you intend to continue prohibiting joyriding, cruising and/or parades, and the purported authority to impose this wholesale prohibition on constitutionally protected freedoms.

Depending on the information supplied by you,⁷ or any corrections supplied by you, on behalf of our client we reserve the right to seek the following, which is non-exclusive:

1. Permanent deletion of the April 14, 2020 Facebook post banning parades, joyriding, and cruising;⁸
2. Acknowledgement that Osage County residents are free to exercise their constitutional rights during a pandemic;
3. Confirmation that you have rescinded the county-wide prohibition on parades, joyriding, and cruising, etc.⁹;

As I stated above, I have every reason to believe this matter can be resolved quickly. We sincerely wish to avoid a contentious dispute. However, if you do not respond satisfactorily by Thursday, April 23, 2020 at 10:00 a.m., we are prepared to take further action to protect the rights of our client.



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⁷ We urge you to send any information you believe supports the county-wide ban. And, if you feel anything in this letter is inaccurate, or we have misunderstood the situation, please advise immediately. Please set forth the accurate facts. Further, pursuant to KORA, please send any/all public health orders issued by you/Osage County Health Department in response to COVID-19; the Osage County charter; all documents outlining the duties of the Osage County Health Department and its director; and all documents discussing the interplay between the County, the Health Department and its employees.

⁸ If this post has already been deleted, please advise.

⁹ Again, this is non-exclusive.