



## LEGAL DEPARTMENT

ACLU of Kansas & Western Missouri

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**By E-Mail Only: [akummer@anthonykansas.org](mailto:akummer@anthonykansas.org)**

June 6, 2013

Amber Kummer, City Clerk/Administrator  
City of Anthony  
124 South Bluff  
PO Box 504  
Anthony, KS 67003

**Re: Anthony City Ordinance 3-115.**

Dear Administrator Kummer:

As you know, the Muddy Water Music Festival is scheduled to take place in Anthony this weekend. I am writing because the ACLU Foundation of Kansas & Western Missouri has learned that members of the City Commission and the City's Police Chief have told the Festival's organizers that the City intends to enforce city ordinances prohibiting "the use of indecent or profane language." The City apparently believes Section 3-115 of the City Code applies because Calamity's LLC has applied for a cereal malt beverage license to sell beer at the Festival.

Section 3-115, "Profane Language, Conduct," of the Anthony City Code provides as follows:

It shall be unlawful for any person engaged in operating a place of business for selling or dispensing cereal malt beverages at retail to permit the use of indecent or profane language or conduct at or within the licensed place of business.

We believe the ordinance's prohibition of "indecent and profane language" violates the First Amendment.

"The constitutional guarantees of freedom of speech forbid the [government] to punish the use of words or language not within 'narrowly limited classes of speech.'" *Gooding v. Wilson*, 405 U.S. 518, 521-522 (1972). Although the First Amendment "does not embrace certain categories of speech, including defamation, incitement, obscenity, and pornography produced with real children," *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 245-46 (2002), profane and indecent speech are protected. As the Supreme Court pointed out, "one man's vulgarity is another's lyric." *Cohen v. California*, 403 U.S. 15, 24 (1971) (jacket bearing the word "Fuck the Draft" protected). The Court also explained in *Cohen* that government officials cannot be trusted to make principled distinctions between forbidden words and permitted words; and that the Constitution leaves matters of taste and style to the individual. *Id.* See also *Ashcroft*, 535 U.S. at

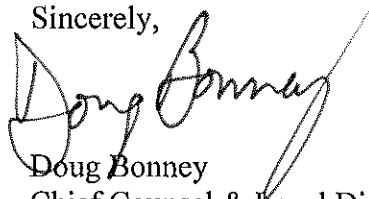
245 ("As a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear").

The Court has repeatedly held that the government cannot punish a person for the use of coarse profanity. *See Lewis v New Orleans*, 415 US 130 (1974) ("God damned mother fucking police" protected, absent genuinely violent context); *Hess v. Indiana*, 414 US 105 (1973) ("We'll take the fucking street again later on" shouted as police sought to restore order during a campus antiwar demonstration could not be criminally punished either as fighting words or obscene speech); *Papish v. Board of Curators*, 410 US 667 (1973) (reversing expulsion of University of Missouri student for distributing campus newspaper containing article headlined "Motherfucker Acquitted").

We request that the City Commission promptly repeal Section 3-115 of the City Code. We also request that the City's Administration and Police Department make it clear to Festival's sponsors and the holders of cereal malt beverage licenses that the City will not enforce this ordinance between now and the time the City Commission repeals it. Specifically, the City should provide these assurances to Calamity's LLC and the sponsors of the upcoming Muddy Water Music Festival.

We would be happy to discuss these issues with you or your lawyers. Please contact us if you have any questions.

Sincerely,



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