HENRY MCMASTER
ATTORNEY GENERAL

October 13, 2008

Marcia S. Adams, Executive Director
South Carolina Department of Motor Vehicles
Post Office Box 1498
Blythewood, South Carolina 29016

Dear Ms. Adams:

You seek an opinion as to "whether the agency's current written policy banning political activity on its property will withstand constitutional scrutiny." In other words, if a person declines a DMV request either to cease [its] political activity or leave the property, could the person be lawfully arrested for trespass after notice?" By way of background, you provide the following information:

> [t]his issue arose recently when petitioners stood in front of several DMV branch offices asking people as they entered and exited if they would be willing to sign petitions to put a candidate's name of the ballot.
>
> I enclose a copy of DMV Policy AD-016, dated May 20, 2008. When the recent petitioning occurred, we asked the individuals to leave, showing them the policy and directing their attention to Section III(B)(1). Most of them left, but not all did. The owner of the business that was organizing the petitioning refused to leave or remove people who had been hired, claiming that our policy was unconstitutional in regard to the public's right to access the political process. While we did legal research before involving law enforcement, the petitioning ended and the matter became temporarily moot.
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> We anticipate that this issue will arise again. It may not occur this election year, but it will arise in future elections.
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> Our research showed that first amendment rights on public property depend on the type of property. As described in *Perry Education Ass'n. v. Perry Local Educators' Ass'n.*, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983), public property is divided into three categories for first amendment analysis: places which by tradition or by government fiat have been devoted to assembly and debate; public property which

> the state has opened for use by the public as a place for expressive activity; and public property which is not by tradition or designation a forum for public communication. The South Carolina DMV has never fit within the first category of a traditional public forum nor has it ever put itself in the second category by opening its property. Therefore, the DMV considers itself to be in the third category of property that has not been dedicated to First Amendment activity.
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> We believe that the case that is most relevant to our situation in *U.S. v. Kokinda*, 497 U.S. 720, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990). That case held that a United States Post Office with its own parking lot and sidewalk is not a public forum and that the Postal Service had a right to not allow political activity.
>
> During the recent petitioning, two cases were provided to us, ostensibly to prove that the DMV was required to allow public access to its property. Those documents are enclosed for your staff's information, though we do not believe that the fact situations in those cases are relevant to our facts.
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> We request a formal Attorney General's Opinion because there are sixty-eight offices throughout the state. We will never know where this situation will arise. We can anticipate that when we do contact local law enforcement and the circuit solicitor, it will be easier to receive assistance after providing an opinion.
>
> Conversely, if our policy is not enforceable as it is now written, we need to revise it to become so.

For the reasons set forth below, it is our opinion that DMV's policy is constitutional.

Law / Analysis

The landmark case for First Amendment "public forum" analysis is *Perry Ed. Assn. v. Perry Local Educators Assn.*, 460 U.S. 37 (1983). In *Perry*, the question was whether the First Amendment, applicable to the states by virtue of the Fourteenth Amendment, is violated when a union that has been elected by public school teachers as their exclusive bargaining representative is granted access to certain means of communication, while such access is denied to a rival union." *Id.* at 44. In *Perry*, the Supreme Court characterized the various uses of public property for First Amendment purposes as follows:

> [i]n places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the state to limit expressive activity are sharply circumscribed. At one end of the spectrum are streets and parks which "have immemorially been held in trust for the use of the public, and, time out of mind, have

been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. CIO*, 307 U.S. 496, 515, 59 S.Ct. 954, 963, 83 L.Ed. 1423 (1939). In these quintessential public forums, the government may not prohibit all communicative activity. For the state to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. *Carey v. Brown*, 447 U.S. 455, 461, 100 S.Ct. 2286, 2290, 65 L.Ed.2d 263 (1980). The state may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. *United States Postal Service v. Council of Greenburgh*, 453 U.S. 114, 132, 101 S.Ct. 2676, 2686, 69 L.Ed.2d 517 (1981); *Consolidated Edison Co. v. Public Service Comm'n*, 447 U.S. 530, 535-536, 100 S.Ct. 2326, 2332, 65 L.Ed.2d 319 (1980); *Grayned v. City of Rockford, supra*, 408 U.S., at 115, 92 S.Ct., at 2302; *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940); *Schneider v. State of New Jersey*, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155 (1939).

A second category consists of public property which the state has opened for use by the public as a place for expressive activity. The Constitution forbids a state to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place. *Widmar v. Vincent*, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981) (university meeting facilities); *City of Madison Joint School District v. Wisconsin Public Employment Relations Comm'n*, 429 U.S. 167, 97 S.Ct. 421, 50 L.Ed.2d 376 (1976) (school board meeting); *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975) (municipal theater). ... Although a state is not required to indefinitely retain the open character of the facility, as long as it does so it is bound by the same standards as apply in a traditional public forum. Reasonable time, place and manner regulations are permissible, and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest. *Widmar v. Vincent, supra*, 454 U.S., at 269-270, 102 S.Ct., at 279.

Public property which is not by tradition or designation a forum for public communication is governed by different standards. We have recognized that the "First Amendment does not guarantee access to property simply because it is owned or controlled by the government." *United States Postal Service v. Greenburgh Civic Ass'n, supra*, 453 U.S., at 129, 101 S.Ct., at 2684. In addition to time, place, and manner regulations, the state may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view. *Id.*, 453 U.S., at 131, n. 7, 101 S.Ct., at 2686, n. 7. As we have stated

> on several occasions, "the State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." *Id.*, 453 U.S., at 129, 101 S.Ct., at 2684; *Greer v. Spock*, 424 U.S. 828, 836, 96 S.Ct. 1211, 1216, 47 L.Ed.2d 505 (1976); *Adderley v. Florida*, 385 U.S. 39, 48, 87 S.Ct. 242, 247, 17 L.Ed.2d 149 (1966).

Id. at 45-46.

The *Perry* Court concluded that the school mail facilities at issue in that instance fell into the third category, thus rendering the property a nonpublic forum. In the Court's view, "[t]he internal mail system, at least by policy, is not held open to the general public." *Id.* at 47. Nor was such system a "limited public forum," concluded the Court. In the Court's view,

> [a]s the case comes before us, there is no indication in the record that the school mailboxes and interschool delivery system are open for use by the general public. Permission to use the system to communicate with teachers must be secured from the individual building principal. There is no court finding or evidence in the record which demonstrates that this permission has been granted as a matter of course to all who seek to distribute material. We can only conclude that the schools do allow some outside organization such as YMCA, Cub Scouts, and other civic and church organizations to use the facilities. This type of selective access does not transform governmental property into a public forum. In *Greer v. Spock, supra*, 424 U.S. at 838, n. 10, 96 S.Ct. at 1217 n. 10, the fact that other civilian speaker and entertainers had sometimes been invited to appear at Fort Dix did not convert the military base into a public forum. And in *Lehman v. Shaker Heights*, 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770 (1974) (Opinion of Blackmon, J.) a plurality of the Court concluded that a city transit system's rental of space in its vehicles for commercial advertising did not require it to accept partisan political advertising.

Id. at 47.

Other decisions of the Supreme Court adopt a similar analysis. *See, International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992); *Postal Service v. Council of Greenburgh Civic Assns., supra*; *Greer v. Spock, supra*; *Cornelius v. NAACP Legal Defense & Education Fund, Inc.*, 473 U.S. 788, 800 (1985). In *Cornelius*, the Court observed that a traditional public forum has as "a principal purpose ... the free exchange of ideas." 473 U.S. at 800. *Greer* rejected the idea that a public forum is created "whenever members of the public are permitted freely to visit a place owned or operated by the Government." 424 U.S. at 836.

And, in *International Society for Krishna Consciousness, Inc. v. Lee, supra*, the Court concluded that an airport terminal was not a public forum; moreover, the airport's ban on solicitation

of contributions was considered reasonable. In the Court's view, it could not be fairly concluded that an airport terminal has as its principal purpose the promotion of "'the free exchange of ideas.'" *Id.*, at 682, quoting *Cornelius*, *supra*. Rather,

> ... the record demonstrates that Port Authority management considers the purpose of the terminals to be facilitation of air travel, not the promotion of expression. ... Even if we look beyond the intent of Port Authority to the manner in which the terminals have been operated, the terminals have never been dedicated (except under the threat of court order) to expression in the form sought to be exercised here: i.e. the solicitation of contributions and the distribution of literature.

The Port Authority's ban was, moreover, considered reasonable in light of the function of the Airport terminal. In the Court's opinion,

> [w]e have on many prior occasions noted the disruptive effect that solicitation may have on business. ... Passengers who wish to avoid the solicitor may have to alter their paths, slowing both themselves and those around them. The result is that the normal flow of traffic is impeded .... This is especially so in an airport where "[a]ir travelers, who are often weighted down by cumbersome baggage ... may be hurrying to catch a plane or to arrange ground transportation." 925 F.2d at 582. Delays may be particularly costly in this setting, as a flight missed by only a few minutes can result in hours worth of subsequent inconvenience.
>
> In addition, face-to-face solicitation presents risks of duress that are an appropriate target of regulation. The skillful, and unprincipled, solicitor can target the most vulnerable, including those accompanying children or those suffering physical impairment and who cannot easily avoid the solicitation .... The unsavory solicitor can also commit fraud through concealment of his affiliation or through deliberate efforts to shortchange those who agree to purchase .... Compounding this problem is the fact that, in an airport, the targets of such activity frequently are on tight schedules. This in turn makes such visitors unlikely to stop and formally complain to airport authorities.

505 U.S. at 683-84.

U.S. v. Kokinda, 497 U.S. 720 (1990), a case referenced in your letter, a case referenced in your letter, is also particularly instructive. In a plurality opinion, the Supreme Court upheld a United States Postal Service regulation prohibiting "[s]oliciting alms and contributions" against a First Amendment attack. The Fourth Circuit had concluded that the postal sidewalk – the area at issue – is a traditional public forum and analyzed the regulation as a time, place and manner regulation.

The Supreme Court, however, reversed. Recognizing that "[t]he Government's ownership of property does not automatically open that property to the public," the Court distinguished the level of First Amendment scrutiny when "'the governmental function operating ... [is] not the power to regulate or license, as lawmaker, ... but, rather, as proprietor, to manage [its] internal operation[s] ... .'" 497 U.S. at 725, quoting *Cafeteria and Restaurant Workers v. McElroy*, 367 U.S. 886, 896 (1961). The Court rejected the argument that the sidewalk in question, while admittedly on Postal Service property, was indistinguishable from "the municipal sidewalk across the parking lot from the post office's entrance," thus making the area a public forum. In the Court's view "[t]he mere physical characteristics of the property cannot dictate forum analysis." *Id.* at 727. The Court referenced *Greer v. Spock*, *supra*, noting that there, "even though a military base permitted free civilian access to certain unrestricted areas, the base was a nonpublic forum." *Id.* Likewise, the postal sidewalk was a nonpublic forum. The court reasoned as follows:

> [t]he postal sidewalk at issue does not have the characteristics of public sidewalks traditionally open to expressive activity. The municipal sidewalk that runs parallel to the road in this case is a public passageway. The Postal Service's sidewalk is not such a thoroughfare. Rather, it leads only from the parking area to the front door of the post office. Unlike the public street described in *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981), which was "continually open, often uncongested, and constitute[d] not only a necessary conduit in the daily affairs of a locality's citizens, but also a place where people [could] enjoy the open air or the company of friends and neighbors in a relaxed environment," *id.*, at 651, 101 S.Ct., at 2566, the postal sidewalk was constructed solely to provide for the passage of individuals engaged in postal business. The sidewalk leading to the entry of the post office is not the traditional public forum sidewalk referred to in *Perry*.
>
> Nor is the right of access under consideration in this case the quintessential public sidewalk which we addressed in *Frisby v. Schultz*, 487 U.S. 474, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988) (residential sidewalk). The postal sidewalk was constructed solely to assist postal patrons to negotiate the space between the parking lot and the front door of the post office, not to facilitate the daily commerce and life of the neighborhood or city. The dissent would designate all sidewalks open to the public as public fora. See *post*, at 3129 ("[T]hat the walkway at issue is a sidewalk open and accessible to the general public is alone sufficient to identify it as a public forum"). That, however, is not our settled doctrine. In *United States v. Grace*, 461 U.S. 171, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983), we did not merely identify the area of land covered by the regulation as a sidewalk open to the public and therefore conclude that it was a public forum:

> "The sidewalks comprising the outer boundaries of the Court grounds are indistinguishable from any other sidewalks in Washington, D.C., and we can discern no reason why they should be treated any differently. Sidewalks, of course, are among those areas of public property that traditionally have been held open to the public for expressive activities and are clearly within those areas of public property that may be considered, generally without further inquiry, to be public forum property. In this respect, the present case differs from *Greer v. Spock* .... In *Greer*, the streets and sidewalks at issue were located within an enclosed military reservation, Fort Dix, N.J., and were thus separated from the streets and sidewalks of any municipality. That is not true of the sidewalks surrounding the Court. There is no separation, no fence, and no indication whatever to persons stepping from the street to the curb and sidewalks that serve as the perimeter of the Court grounds that they have entered some special type of enclave." *Id.*, at 179-180, 103 S.Ct., at 1708

Thus, the Court concluded:

> [t]he Postal Service has not expressly dedicated its sidewalks to any expressive activity. Indeed, postal property is expressly dedicated to only one means of communication: the posting of public notices on designated bulletin boards. See 39 CFR § 232.1(*o*) (1989). No Postal Service regulation opens postal sidewalks to any First Amendment activity. To be sure, individuals or groups have been permitted to leaflet, speak, and picket on postal premises, see Reply Brief for United States 12; 43 Fed.Reg. 38824 (1978), but a regulation prohibiting disruption, 39 CFR § 232(1)(e) (1989), and a practice of allowing some speech activities on postal property do not add up to the dedication of postal property to speech activities. We have held that "[t]he government does not create a public forum by ... *permitting* limited discourse, but only by intentionally opening a nontraditional forum for public discourse." *Cornelius*, 473 U.S., at 802, 105 S.Ct., at 3449 (emphasis added); see also *Perry*, 460 U.S., at 47, 103 S.Ct., at 956 ("[S]elective access does not transform government property into a public forum"). Even conceding that the forum here has been dedicated to some First Amendment uses, and thus is not a purely non-public forum, under *Perry*, regulation of the reserved non-public uses would still require application of the reasonableness test. See *Cornelius, supra*, 473 U.S., at 804-806, 105 S.Ct., at 3450-3451.

Id. at 730. Inasmuch as the Court found that the area in dispute was a nonpublic forum, it need only be deemed reasonable to be constitutional under the First Amendment. The Court concluded the Regulation met this test:

> [t]he Postal Service's judgment is based on its long experience with solicitation. It has learned from this experience that because of a continual demand from a wide

> range of groups for permission to conduct fundraising or vending on postal premises, postal facility managers were distracted from their primary jobs by the need to expend considerable time and energy fielding competing demands for space and administering a program of permits and approvals. See Tr. of Oral Arg. 9 ("The Postal Service concluded after an experience with limited solicitation that there wasn't enough room for everybody who wanted to solicit on postal property and further concluded that allowing limited solicitation carried with it more problems than it was worth"). Thus, the Service found that "even the limited activities permitted by [its] program ... produced highly unsatisfactory results." 42 Fed.Reg. 63911 (1977). It is on the basis of this real-world experience that the Postal Service enacted the regulation at issue in this case. The Service also enacted regulations barring deposit or display of written materials except on authorized bulletin boards "to regain space for the effective display of postal materials and the efficient transaction of postal business, eliminate safety hazards, reduce maintenance costs, and improve the appearance of exterior and public-use areas on postal premises." 43 Fed.Reg. 38824 (1978); see 39 CFR § 232.1(*o*) (1989). In short, the Postal Service has prohibited the use of its property and resources where the intrusion creates significant interference with Congress' mandate to ensure the most effective and efficient distribution of the mails. This is hardly unreasonable.

Id. at 735.

Moreover, lower federal courts have concluded that parking lots of governmental property are nonpublic fora. So long as exclusion therefrom is viewpoint neutral and reasonable, these decisions conclude that such regulation does not violate the First Amendment. In *United Food and Commercial Workers Local 1099 v. City of Sidney,* 364 F.3d 738 (6th Cir. 2004) for example, the Sixth Circuit addressed this issue. There, Plaintiffs-appellants were prohibited from soliciting signatures for a referendum petition outside six polling places on election day in Sidney, Ohio. One issue in the case was whether appellants could gather signatures at various locations on school and private property. These areas were outside the campaign-free zone for polling places established by Ohio law. One such location in question was the parking lot and walkway leading to the polling place. Appellants argued that such areas, were public fora because of the proximity of polling area. However, the Sixth Circuit rejected this contention, analyzing the facts as follows:

> [t]here is no evidence in the record in this case that Ohio intended to open up nontraditional forums such as schools and privately-owned buildings for public disclosure merely by utilizing portions of them as polling places on election day. Appellants were given the opportunity by the district court to amend their complaint in order to set forth allegations supporting their contentions that the government had, by policy or practice, designated the property surrounding the polling places as a public forum for the purposes of campaigning or other expressive activities. They

> did not avail themselves of this opportunity. Appellants also argue that § 3501.30's designation of a campaign free outside every polling place is evidence of the compatibility of expressive activity with polling places because it "implies an expectation that people will gather at polling places to express themselves." The district court rejected this argument and so do we. Just because certain types of speech are expressly prohibited within a certain area does not mean that they are therefore permissible outside that area. ...

364 F.3d at 749. Thus, "[h]aving concluded that the parking lots and walkways leading to the polling places are nonpublic forums," the Sixth Circuit addressed "whether the restriction on soliciting signatures was reasonable and viewpoint neutral." In the view of the Court, this test was met. The Court thus concluded:

> [a]ccording to appellants' complaint, school officials asked them to leave the premises because they were concerned about "safety issues." At the Y.M.C.A. and Trinity, police officers were responding to requests from the owners of those properties when they asked appellants to leave the premises. Appellants argue that their exclusion from these properties was unreasonable because they were soliciting signatures in a peaceful and non-disruptive manner. However, the government does not need to wait "until havoc is wreaked to restrict access to a nonpublic forum." *Cornelius*, 473 U.S. at 810, 105 S.Ct. 3439. Furthermore, appellees could prohibit appellants from soliciting signatures if they thought that their activities would disrupt the polling place or the school or private property surrounding it. "Although the avoidance of controversy is not a valid ground for restricting speech in a public forum, a nonpublic forum by definition is not dedicated to general debate or the free exchange of ideas. The First Amendment does not forbid a viewpoint-neutral exclusion of speakers who would disrupt a nonpublic form and hinder its effectiveness for its intended purpose." *Id.* Appellants argue in their brief that their exclusion from the areas outside of the polling places was an attempt to suppress their speech because public officials opposed their views, but they have alleged no facts to support this allegation. There is no contention, for example, that others were permitted to solicit signatures for referendum petitions on other topics, or that anyone was allowed to engage in other types of electioneering activities within these areas. Under these circumstances, we conclude that the decision to exclude appellants from soliciting signatures in the parking lots and walkways leading to the polling places was reasonable and viewpoint neutral, and that the appellants' First Amendment rights were not violated when they were denied access to these nonpublic forums.

Moreover, the Fourth Circuit decision of *Grattan v. Bd. of Commr.'s of Baltimore City*, 805 2d 1160 (4th Cir. 1986) is persuasive authority that a government entity's parking lot is a nonpublic forum. In *Grattan*, the Court addressed whether a school parking lot was a public forum during

school hours. The trial court had held that the parking lot was a non-public forum, but *Grattan* argued on appeal that a public school parking lot "is akin to a public sidewalk, i.e. a 'quintessential public forum' in which the State may not prohibit communicative activity absent the showing of a compelling State interest." 805 F.2d at 1162.

The Fourth Circuit, however, disagreed with Grattan's "characterization of a school parking lot as a public forum." *Id.* Instead, concluded the Court, "the parking lot falls within the third category of public property described by the Supreme Court in *Perry* [Ed. Assn. v. Perry Local Educators Assn., supra], i.e. public property which is not by tradition or designation a forum for public communication." *Id.* Quoting *Perry*, the Fourth Circuit noted that "'the State may reserve the forum for its intended purposes, communicative or otherwise ...." Further quoting the *Perry* case, the Court stated that a restriction on speech in such circumstance is constitutional

> ... as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view. As we have stated on several occasions " ' "[t]he State, no less than a private property owner, has power to preserve the property under its control for the use to which it is lawfully dedicated." ' " ... .

Id. at 1162-63, quoting 460 U.S. at 46. Thus, the Court concluded that the State could reasonably restrict speech in the form of union solicitation activity on the property. Concluded the Court,

> [b]ecause a public school parking lot is a nonpublic forum, the State of Maryland and the School Board may prohibit the solicitation activities of Mr. Grattan. The constitutionally protected activity that meets the test of "lawful business" under the statute in question is activity which is related to the educational purposes of public school property. While we agree with the district court that a desire to avoid the disruption and controversy of union politics provides a sufficient justification for excluding Mr. Grattan's activities, such exclusion is based on the broader grounds that Appellant's activities were not related to the education of students ... . In so holding, we recognize the need to regulate public access to our nation's schools. Places where young people gather can invite fences seeking to recruit suppliers of stolen goods, pronographers, drug merchants and other persons plying illicit trades. Denial of access to Mr. Grattan during non-school hours was therefore reasonable and was not a pretext for viewpoint discrimination.

Id. at 1163.

With these legal authorities in mind, we turn to the situation raised by your letter. You reference the Department's Policy AD-016, entitled "Use of Department Facilities By Outside Entities." Such Policy relates to the "[a]rea owned or leased by the Department or State adjacent to

and contiguous with Department buildings used to conduct Department business, *including but not limited to parking lots* and green areas." (emphasis added). Section I. Section II further states the Policy's purpose which is to "administer South Carolina's motor vehicles laws in an efficient, effective and professional manner in order to deliver accuracy and security in all transaction documents and to provide the highest levels of customer service to the citizens of South Carolina." Specifically, the Policy was developed to insure, among other things, unimpeded customer access to Department facilities as well as "to maintain the safety and security of department equipment, secured documents and data by limiting access to facilities outside of working hours ...." Further, the Policy was designed to provide guidelines for Department facilities "by public and private groups and entities" and to "establish guidelines for the use of Department facilities for political activities." Section II. Thus, in Section III, the Policy provides that "[t]he Department will not rent or otherwise provide use of its buildings for meetings by any outside group of individuals or for any political activities or campaigns at any time." Moreover, Section III(B)(1) deals expressly with "external premises." Such provision states that ...

a. Because of its responsibility to ensure unimpeded access to its facilities by its customers and in order to maintain the security of its buildings and their secured contents, the Department does not rent or otherwise provide use of its external premises for meetings or other assemblies by any group of individuals at any time.

b. External premises cannot be used for any political activities, *including but not limited to petition* drives.

c. External premises cannot be used for any solicitation (e.g. fund raising sales).

(emphasis added).

Of course, this Office cannot resolve factual issues in an opinion. *Op. S.C. Atty. Gen.*, December 12, 1983. And, only a court may ultimately resolve the issue of whether or not a public forum exists with respect to the property in question – a DMV office and its external premises (parking lot). Nevertheless, based upon the applicable case law and the DMV Policy, referenced above, we conclude that a court would likely conclude that enforcement of the DMV Policy is valid under the First Amendment.

Conclusion

Of course, only a court can determine with finality the constitutionality of DMV's Policy AD-016. However, based upon the applicable case law, as well as the text of DMV's Policy, it is our opinion that a court would likely conclude that Department of Motor Vehicles buildings and external premises (i.e. parking lots, etc.) constitute a nonpublic forum, rather than a public forum or

a limited public forum. We do not believe that a court would liken the external premises to a public sidewalk or to be property which has been opened for public debate or discussion. Accordingly, the applicable constitutional standard would, in our judgment, be deemed by a court to be one of reasonableness. In this regard, as was the case in the *Grattan* decision, decided by the Fourth Circuit, we deem DMV's "[d]enial of access ... [to be] reasonable and ... not a pretext for viewpoint discrimination." 805 F.2d *supra* at 1163.

DMV's Policy AD-016 makes clear that nonaccess to DMV property for anything other than the conduct of business with DMV is designed to insure "unimpeded access to its facilities by its customers and in order to maintain the security of the buildings and their secured contents ...." Quick and easy access by the public for DMV business, such as the renewal or issuance of drivers' licenses or vehicle registrations is, of course, essential. Thus, the DMV Policy provides that DMV's external premises "cannot be used for any political activities, including but not limited to petition drives." Accordingly in our opinion, a court would likely conclude that DMV's policy meets the constitutional test under the First Amendment as prescribed by *Perry, Intl. Society for Krishna Consciousness, Kokinda* and other cases referenced herein with respect to nonpublic fora. Moreover, the Policy is, on its face, content neutral and reasonable. That being the case, enforcement of the *Policy* by trespass provisions would be appropriate.

Very truly yours,

Henry McMaster
Attorney General

By: Robert D. Cook
Deputy Attorney General

RDC/an