

**COMMONWEALTH OF KENTUCKY
16th JUDICIAL CIRCUIT
BOONE CIRCUIT COURT
CASE NO. 05-CI-1506**

EDWIN F. KAGIN

and

AMERICAN ATHEISTS, INC.

PLAINTIFFS,

vs.

COMPLAINT

THOMAS J. LAWRY, as Occupational Tax Administrator of Boone County, Kentucky

Serve:
Finance Department
P.O. Box 960
Burlington, KY 41005

and

LISA H. BUERKLEY, as County Treasurer of Boone County, Kentucky

Serve:
Finance Department
P.O. Box 960
Burlington, KY 41005

and

J.R. SCHRAND, as County Attorney of Boone County, Kentucky

Serve:
County Attorney's Office
2475 Burlington Pike
PO Box 83
Burlington, KY 41005

and

BOONE COUNTY, KENTUCKY FISCAL COURT

Serve:
Gary W. Moore
Judge-Executive's Office
2950 Washington Street
Burlington, KY 41005

DEFENDANTS.

* * * * *

Come the plaintiffs, EDWIN F. KAGIN (hereinafter "Kagin"), *pro se*, and AMERICAN ATHEISTS, INC. (hereinafter "American Atheists"), by and through the undersigned counsel, and, for their Complaint and cause of action against the defendants herein, state as follows:

1) Kagin is a citizen, resident, and taxpayer of the United States and of Boone County, Kentucky. He is an attorney at law, and a member of the Kentucky Bar Association, licensed by the Supreme Court of Kentucky to practice law in all courts of the Commonwealth of Kentucky. At all relevant times herein mentioned, his law office was, and currently is, located in Boone County, Kentucky.

2) American Atheists is a not for profit corporation, with its principal place of business in the State New Jersey. It is in good standing, and registered to do business, in the Commonwealth of Kentucky under Organization Number 0597634. American Atheists is a nationwide movement, having among its goals the defense of the civil liberties of atheists, and the total, absolute separation of government and religion.

3) American Atheists has members in Boone County, Kentucky whose rights have been, are being, and will be, adversely affected by the unconstitutional actions of the

defendants herein alleged, but who, for fear of obloquy, discrimination, and retaliation are disinclined to be named as plaintiffs in this action. American Atheists can assert such members' interests in this matter and therefore has standing to bring this action. Kagin is the Kentucky State Director for American Atheists.

4) Defendant BOONE COUNTY, KENTUCKY FISCAL COURT (hereinafter "Fiscal Court") is the governing body of Boone County, Kentucky, having the power to pass laws or "ordinances," subject to all requirements of the Constitution and laws of Kentucky.

5) On or about May 15, 2000, Fiscal Court passed Boone County Ordinance § 110.26, titled "RELIGIOUS LEADERS EXEMPT FROM LICENSE FEE." This Ordinance states, in relevant part:

(A) No occupational license shall be imposed on a minister of religion who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its public worship in the performance of one or more of those duties....

6) Upon learning of the passage of this ordinance by the Boone County Fiscal Court of Boone County, Kagin, who had previously paid the occupational tax and license fees required by Boone County, declined to pay any further Boone County occupational taxes and licensing fees, believing that the requirement that he paid such, after the enactment of § 110.26, would violate rights secured to him by the Bill of Rights of the Kentucky Constitution, and more particularly Section Five thereof, which states in relevant part, under the title "Right of religious freedom,"

No preference shall ever be given by law to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity; nor shall any person be compelled to ... contribute to ... the salary or support of any minister of religion...

7) Subsequent to his decision to pay no more Boone County occupational taxes or licensing fees until such time as § 110.26, which unconstitutionally compels him to contribute to the salary or support of those favored ministers of religion who are “ordained,” was repealed, Kagin was sent several warning letters from the office of defendant THOMAS J. LAWRY (hereinafter “Lawry”), the Occupational Tax Administrator for Boone County, and from the office of defendant J.R. SCHRAND (hereinafter “Schrand”) the County Attorney for Boone County, whose office enforces the criminal proscriptions prescribed by the Fiscal Court of Boone County for the failure or refusal of a business licensee, such as Kagin, to pay those Boone County occupational taxes and licensing fees required by the unconstitutional operation of Boone County ordinance § 110.26. Kagin ignored these warnings.

8) On or about July 15, 2005, Lawry sent to Kagin a letter which stated that Kagin was being given until July 29, 2005, “... *as a written FINAL filing date granted to you before the filing of a criminal complaint in Boone County District Court*” for the filing of back returns and the payment of all taxes and fees alleged to be owed.

9) On or about July 22, 2005, Kagin personally filed, under protest, all requested forms and returns, and paid, under protest, all taxes and fees said to be owing to Boone County, together with all penalties and interest thereon which were required by Lawry, who assisted him in the preparation of the requested forms after rejecting Kagin’s constitutional protests against being required to make such payment.

10) Defendant LISA H. BUERKLEY, as County Treasurer of Boone County, Kentucky, is the Boone County, Kentucky official responsible for holding tax money

collected for occupation tax and licensing fees and for issuing any refunds, such as that sought herein.

11) The requirement that Kagin, and the members of American Atheists in Boone County who are subject to the Boone County occupation tax and licensing fees, pay such taxes and fees, while ordained ministers are exempt from these requirements, is repugnant to the Kentucky Constitution, and more particularly to Sections 3, 5, and 26 thereof.

12) Boone County ordinance § 110.26 is unconstitutional, under the Kentucky Constitution, in that it violates Section 3 of the Kentucky Constitution, which provides:

...no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services...

13) Boone County ordinance § 110.26 is unconstitutional, under the Kentucky Constitution, in that it violates Section 5 of the Kentucky Constitution, which provides:

No preference shall ever be given by law to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity; nor shall any person be compelled... to contribute to the salary or support of any minister of religion and the civil rights, privileges or capacities of no person shall be taken away, or in anywise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma or teaching....

14) By virtue of the passage of Boone County ordinance § 110.26, and by virtue of said ordinance remaining in effect in the Commonwealth of Kentucky, and by virtue of citizens being forced, under threat of criminal sanctions, to be subjected to a continuing violation of rights secured to them under Sections 3 and 5 of the Kentucky Constitution, the defendants and each of them, jointly and severally, both by action and by inaction, have violated their duties to plaintiffs under the Kentucky Constitution, which states, in Section 26 thereof, that all laws “...contrary to this Constitution, shall be void.”

15) As a direct and proximate result of the unconstitutional operation and enforcement against plaintiffs of Boone County ordinance § 110.26, which is void under the Kentucky Constitution, plaintiffs have suffered damages for which they have no adequate remedy at law. Plaintiffs seek a declaration that said ordinance is unconstitutional and void, together with injunctive relief against its operation and enforcement, and mandatory relief compelling a refund of taxes paid.

WHEREFORE, plaintiffs pray and demand:

A) For a judgment, finding, and declaration, by the Court, that Boone County ordinance § 110.26 is unconstitutional under the Kentucky Constitution, and that the Court enjoin the enforcement of same.

B) That the Court declare the rights of the parties herein.

C) That the Court order that a refund be made to Kagin of all Boone County license fees and occupational taxes paid by Kagin since the passage of Boone County ordinance § 110.26, and that a refund be made to any members of American Atheists similarly adversely affected,

D) For a trial by jury on all issues so triable.

E) For the costs of this action, together with reasonable attorney fees.

F) Any and all other relief, both legal and equitable, to which plaintiffs may appear to be entitled.

Respectfully submitted:

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