

# What Is a Good Name Worth?

## Local Government Sponsorships and the First Amendment

Jason Bradley Kay

Sponsorships are all the rage these days. Police cars in thirty-eight states (including North Carolina) bear the sales pitches of various products.<sup>1</sup> City buses carry the soothing messages of bottled water companies. Government-owned sports stadiums and office buildings are named for the highest-bidding benefactor. Recently a town in California was invited to change its name from Biggs to Got Milk for a “meaningful contribution.”<sup>2</sup> Apparently a good name *is* worth more than a little silver and gold.<sup>3</sup>

Corporate sponsorship of governmental programs and services appears to be here to stay.<sup>4</sup> Interviews with more than twenty local government officials in North Carolina and other states reveal that the trend has grown because of the potential for using sponsorships to maintain or increase government services without raising taxes or fees.<sup>5</sup> In recent years, tax cutbacks and growing populations have pressured many local governments in North Carolina to seek funding from the private sector in order to maintain or expand their services with fewer resources.<sup>6</sup>

Although local government officials recognize the benefits of sponsorships, they also recognize the possible problems. The two most commonly cited concerns are the potential for partnerships with disreputable sponsors to undermine the public’s perception of the government’s integrity and impartiality, and the fear of legal challenges that might result from prohibiting sponsorships by those entities.<sup>7</sup>

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*Many nonprofit and for-profit organizations sponsor highway cleanup, a service to the community.*



LANCE KOZLOWSKI

Imagine, for example, that you are a county health director and three companies submit proposals to you to cosponsor County Health Day. The first is a reputable pharmaceutical company, the second a company that had ties to Nazi Germany, and the third a conglomerate that makes cigarettes as well as health-related products. Which one would you choose? How would you respond when the other two claimed that the county had violated their First Amendment rights to free speech because it disapproved of their message or identity?

This article outlines a sponsorship policy that permits a local government to generate support from private sponsors, preserve its ability to select or reject sponsors on the basis of designated criteria, and protect its image of integrity and impartiality.<sup>8</sup> Specifically the article identifies problems that can result from sponsorships, describes legal obstacles inherent in creating a sponsorship policy, and presents a method for overcoming those obstacles. (For a brief discussion of corporate sponsorship of quasi-public entities and private nonprofit organizations, see the sidebar on this page.)

## Sponsorship and the First Amendment

A sponsorship occurs when a local government generates resource support from a private entity in return for associating the name of the private entity with its own.<sup>9</sup> Sponsorships create a mutual exchange relationship in which both parties benefit, the local government from the cash or service given by the private entity, the private entity from increased name visibility and improved reputation.<sup>10</sup>

When local governments seek or accept sponsorships with private entities whose values and beliefs conflict with the established beliefs of the citizenry, formidable problems can result. The sponsorship can be perceived by some citizens as offensive, or it can create a perception that the government has compromised its integrity or impartiality.<sup>11</sup> In either case the government may suffer diminished public trust.

## Applicability of the First Amendment

Even private nonprofit organizations have begun opening their doors to sponsors willing to pay a fee to be associated with the feel-good imagery of community-oriented agencies. However, the First Amendment applies only to governmental entities and programs, such as city buses, city recreation programs, and county health programs. Private entities such as nonprofit organizations are not covered in the vast majority of cases.

Exceptions apply only when a private entity is deemed to be a “state actor.” A private entity may be considered a state actor in either of the following situations:

- It is engaged in activities that are traditionally and exclusively the prerogative of the state, such as when it is operating a “company town” or running an election. The case of *Marsh v. Alabama* offers an example of when a private entity is operating a company town and therefore is subject to First Amendment restrictions. In that case a private entity created a company town by operating a privately owned area that possessed all the attributes of a regular city, such as homes, streets, fire protection, and sewer service. The Supreme Court deemed the private entity to be a state actor even though the property and services involved were under the private entity’s exclusive control.<sup>1</sup> The case of *Terry v. Adams* provides an example of when a private entity may be considered a state actor in the context of an election. In that case a county political group ran a preprimary election in which the group’s nominee almost always was elected. The Supreme Court held that the group must adhere to constitutional requirements.<sup>2</sup>
- It is “excessively entwined” with the government in an activity with significant government involvement. This type of situation is uncommon. A private entity is not a state actor, for example, merely because it is extensively regulated by the government, receives most or all of its funding from the government, or is licensed by the government. The case of *Brentwood Academy v. Tennessee Secondary School Athletic Association* provides a good example of when a private entity is considered a state actor under the excessive-entwinement rule. In this case the state secondary school athletic association, a nonprofit organization, was composed of members that were themselves governmental entities, its governing board consisted mostly of government employees, meetings were held on government time, and the association received its funding from its governmental entity members.<sup>3</sup>

Readers who have questions about the First Amendment’s applicability to their nonprofit organization or other nongovernmental entity should contact their attorneys.

### Notes

1. See *Marsh v. Alabama*, 326 U.S. 501 (1946).

2. See *Terry v. Adams*, 345 U.S. 461 (1953).

3. See generally *Brentwood Academy v. Tennessee Secondary Sch. Athletic Ass’n*, 531 U.S. 888 (2001).

The solution to this problem is to preserve discretion in sponsorship-related decisions so that a local government can encourage some sponsorships and discourage others. This allows a local government to generate revenue and community involvement through beneficial sponsorships while avoiding the problems that can result from associating with a sponsor that does not espouse the values and beliefs of the citizenry. Unfortunately, considerable legal complexities attend this solution because the First Amendment

requires governments not to abridge the freedom of speech.

Although a local government may desire to avoid damaging its good name or offending its citizens by preserving its ability to choose among potential sponsors, it must not do so in a manner that violates the First Amendment rights of potential sponsors. When policies are not clear and consistent, a local government is susceptible to issuing arbitrary or discriminatory sponsorship decisions. Both are likely to result in a legal challenge. A well-

crafted sponsorship policy enables local governments to pursue and choose sponsorships in a manner that is clear, consistent, and legally defensible.

The courts have not directly addressed the issue of private sponsorship of government programs and services, but several court decisions have related to private advertising on government property. The issues surrounding advertisements in government spaces are analytically similar to those surrounding sponsorship of local governments. In both types of situations, the local government must decide which parties will be permitted to use government property to propagate their messages, and it must do so without violating the free speech rights of those parties. The controlling desire of the local government is to regulate what message it conveys about itself, whether that be a message of its own creation or a message created by another entity.<sup>12</sup> Thus, legal doctrine relating to advertisements on government property can be used as a framework for analyzing the problems inherent in sponsorship decisions.

### First Amendment Principles

In order to comprehend the need for a sponsorship policy, one must have a basic understanding of First Amendment

principles. A free speech claim can be brought when a government limits a person's or an organization's protected speech in a way that is considered unreasonable.<sup>13</sup> Such a challenge may result when a government grants one organization permission to use its property for communicating a message and denies the same use to another organization.<sup>14</sup> Because the courts have generally held that commercial communication on government property is entitled to a measure of protection under the First Amendment,<sup>15</sup> a local government must ensure that its efforts to exercise discretion over who is permitted to sponsor a government program or service comport with constitutional guidelines.<sup>16</sup>

Determining what is a constitutionally permissible limitation of speech turns on the character of the government property on which the "speech" is to be made.<sup>17</sup> The courts have identified three classes of government property,<sup>18</sup> called "forums": traditional, designated (or limited), and nonpublic.<sup>19</sup> The level of restriction that a local government may place on speech varies according to the forum in which the speech occurs.

A "traditional public forum" exists in places that have been devoted to assembly and debate by long tradition or government fiat.<sup>20</sup> Examples include streets, parks, and other areas tradi-

tionally open to an unfettered exchange of ideas. A "designated public forum" or "limited public forum" is property that has not traditionally been used for assembly and debate but "which the State has opened for use by the public as a place for expressive activity."<sup>21</sup> Simply stated, it is a forum intentionally and affirmatively opened by the government for speech.<sup>22</sup> Examples are physical areas, such as a street-side kiosk for posting pamphlets and announcements or a special area for making speeches or voicing community concerns, and nonphysical areas,<sup>23</sup> such as air time in a political debate or a channel of communication. A "nonpublic forum" may be broadly defined as any property that is not by tradition or designation a forum for public communication.<sup>24</sup> Examples are a mayor's office or the lobby of a county office building.

In a traditional public forum, a local government generally may not regulate speech unless the regulation is a reasonable restriction on the time, place, or manner of the speech.<sup>25</sup> Any regulation of speech based on the content of the message must satisfy a "strict scrutiny" standard of review.<sup>26</sup> Under the strict-scrutiny standard, the regulation must serve a compelling state interest, such as public health or safety, and be narrowly tailored to achieve

## Sample Sponsorship Policy for Local Governments

### Statement of Policy

Carolina City/County will seek sponsors that further its mission by providing monetary or in-kind support for city/county programs or services. Carolina City/County recognizes that the public trust and perception of its impartiality may be damaged by sponsorships that are aesthetically displeasing, politically oriented, or offensive to segments of its citizenry. When the city/county loses public trust and public perception of impartiality, its ability to govern effectively in the interest of its citizens is impaired. Therefore, Carolina City/County permits private sponsorship of government programs or services in limited circumstances as a means to generate funds for improving or expanding those programs and services. Carolina City/County

maintains its sponsorship program as a nonpublic forum and exercises sole discretion over who is eligible to become a sponsor according to the terms of this policy.

Whenever possible, sponsorships should be linked to specific activities, events, programs, or publications. Carolina City/County will neither seek nor accept sponsors that manufacture products or take positions inconsistent with local, state, or federal law or with city/county policies, positions, or resolutions. The establishment of a sponsorship agreement does not constitute an endorsement by Carolina City/County of the sponsor's organization, products, or services.

### Definition of Terms

"Sponsorship" is the right of an external entity (for-profit or not-for-profit) to associate its name, products, or services with Carolina City/County's programs, services, or name. Sponsorship is a

business relationship in which Carolina City/County and the external entity exchange goods, services, and donations for the public display of a message on city/county property acknowledging private support.

### Authority Structure for Review and Approval

Carolina City/County possesses sole and final decision-making authority for determining the appropriateness of a sponsorship relationship and reserves the right to refuse any offer of sponsorship. Sponsorship agreement proposals will be reviewed according to the following procedures and guidelines:

- All sponsorships shall be approved in consultation with the Office of the Carolina City/County Attorney.
- Sponsorship agreements projected to generate \$50,000 or more shall require



*The interiors of buses offer high visibility for sponsors.*

that interest.<sup>27</sup> Practically speaking, this high standard means that governments are severely limited in making content-based distinctions about which advertising messages will be accepted or denied in a traditional public forum.

The degree of protection given to content-based restrictions in a designated

or limited public forum is unclear. The Supreme Court has not explicitly ruled on the issue,<sup>28</sup> and the lower courts are currently “in a state of confusing disequilibrium.”<sup>29</sup> A plurality of circuit courts of appeal have held that the designated public forum and the limited public forum both require the standard

of review applied in a traditional public forum. That is, the regulation must be a reasonable restriction on time, place, or manner, or it must satisfy the strict-scrutiny standard.<sup>30</sup> Under this standard a local government may not make distinctions about which speech is acceptable on the basis of the subject matter

the written approval of the city/county manager, who shall inform the city council/board of commissioners.

- Sponsorship agreements projected to generate less than \$50,000 shall require the written approval of the department head.
- A division head may approve sponsorship agreements of less than \$5,000, in consultation with the department head.

In the discretion of the city/county manager, any proposed sponsorship agreement may be referred to the city council/board of commissioners for approval.

#### Criteria for Proposal Review

Proposals for sponsorship of Carolina City/County programs or services shall be reviewed on the basis of a draft memorandum of understanding that clearly outlines the forms of support offered by the sponsor and the recognition to be given by

Carolina City/County. A memorandum of understanding shall be created for each sponsorship relationship. It shall detail the following information, at a minimum:

- Activities, products, and services of the private entity and its subsidiaries
- Benefits to be given to the proposed sponsor by Carolina City/County, and the estimated monetary value of those benefits
- Benefits to be given to Carolina City/County by the proposed sponsor and the estimated monetary value of those benefits
- Prominence of the proposed public recognition of support
- Content of the proposed public recognition of support
- Duration of the proposed public recognition of support

- Conditions under which the sponsorship agreement will be terminated

Carolina City/County recognizes that entering into a sponsorship agreement with an external entity does not constitute an endorsement of the entity or its services and products but does imply an affiliation. Such affiliation can affect the reputation of Carolina City/County among its citizens and its ability to govern effectively. Therefore, any proposal for sponsorship of a Carolina City/County program or service in which the involvement of an outside entity compromises the public’s perception of the city/county’s neutrality or its ability to act in the public interest will be rejected.

Carolina City/County shall consider the following criteria before entering into a sponsorship agreement:

- Extent and prominence of the public display of sponsorship

of the speech. Therefore, if a prudent and cautious local government desires to limit access to an advertising venue by private entities on the basis of the subject-matter content of an advertising message, it must avoid regulating speech in a traditional or designated public forum.

In the third class of property, however, the nonpublic forum, a local government may more broadly restrict the subject matter of advertisements. In such a forum, “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.”<sup>31</sup> The nonpublic forum allows a local government to regulate speech as long as the regulation satisfies a “rational basis” standard of review. The rational-basis standard requires the regulation to further a “legitimate government interest” and be “rationally related” to achieving that interest.<sup>32</sup> In practice a nonpublic forum allows the government to restrict advertisements on the basis of their subject matter or the subject-matter-related identity of the speaker but not, in fact or in practice, on the basis of the speaker’s viewpoint. For example, if a local government desires to avoid advertisements about the subject matter of gun

control, it may do so. The government may not, however, refuse a particular advertisement because of its position on the subject of gun control. That is, the government must refuse advertisements encouraging gun control as well as those discouraging it. If the local government desires to accept advertisements about gun control, it must accept advertisements encouraging gun control *and* those discouraging it. In short, restrictions regarding advertisements must not be intended to suppress a speaker’s bias or politically unpopular viewpoint. Such governmental restrictions violate the First Amendment.<sup>33</sup>

Local government officials must make a distinction between a designated (or limited) public forum and a nonpublic forum. In both forums the government opens to the public a venue formerly unavailable for public speech. The important difference between a designated public forum and a nonpublic forum is the government’s intent.<sup>34</sup> If the intent is to permit the public *unfettered* access to government property for the purpose of *indiscriminate* expressive activity, the government has created a designated public forum.<sup>35</sup> If the intent of the forum is to permit speech on a *selected* scope of subject matters, the government has created a nonpublic forum.<sup>36</sup> A local government must therefore adopt a

sponsorship policy that carefully creates and vigilantly maintains a nonpublic forum for its sponsorship program.

Adopting a sponsorship policy helps ensure not only that a nonpublic forum is created but that the local government issues consistent decisions. Without a policy to govern the evaluation and the selection of potential sponsors, a local government can unwittingly issue arbitrary, capricious, or conflicting decisions.<sup>37</sup> Such decisions commonly do not withstand legal challenges.<sup>38</sup>

A local government can greatly bolster its defenses against legal challenges by implementing a policy that standardizes sponsorship decisions.<sup>39</sup> The courts have generally agreed that even the most rudimentary policy, if it has some reasonable basis and is consistently followed, will suffice.<sup>40</sup> Thus a primary defense to legal challenges of sponsor-related judgments is to adopt a policy that provides some measure of guidance for sponsorship decisions.

## Elements of a Model Policy

A model sponsorship policy is functionally effective, administratively efficient, and corporately consistent. A review of the literature and interviews with local government officials revealed five policy elements that should constitute a sound

- Aesthetic characteristics of the public display of sponsorship
- Importance of the sponsorship to the mission of Carolina City/County
- Level of support provided by the sponsor
- Cooperation necessary from other Carolina City/County units to implement the sponsorship
- Inconsistencies between Carolina City/County policies and the known policies or practices of the potential sponsor
- Other factors that might undermine public confidence in the city/county’s impartiality or interfere with the efficient delivery of city/county services or operations, including, but not limited to, current or potential conflicts of interest between the sponsor and Carolina City/County employees, officials, or affiliates; and the potential for the sponsorship to tarnish the city/county’s

standing among its citizens or otherwise impair the ability of Carolina City/County to govern its citizens

### Permissible Sponsors and Message Content

Sponsorships on Carolina City/County property are maintained as a nonpublic forum. Carolina City/County intends to preserve its rights and discretion to exercise full editorial control over the placement, content, appearance, and wording of sponsorship affiliations and messages. Carolina City/County may make distinctions on the appropriateness of sponsors on the basis of subject matter of a potential sponsorship recognition message. Carolina City/County will not deny sponsorship opportunities on the basis of the potential sponsor’s viewpoint. Sponsorship from an organization that is engaged in any of the following activities, that has a mission supporting any of the

following subject matters, or that, in the sole discretion and judgment of the authorized representative of the city/county, is deemed to be unsuitable for and contrary to community standards of appropriateness for government publications, shall be prohibited on any Carolina City/County property:

- Promotion of the sale or consumption of alcoholic beverages, or promotion of establishments that are licensed to sell and primarily do sell alcoholic beverages, including bars; provided, however, that food service establishments or places of lodging may be authorized only when the sale of alcohol is incidental to providing food service or lodging
- Promotion of the sale or consumption of tobacco products
- Promotion of the sale of birth control products or services



*Nichols Dodge of Burlington sponsors a sheriff's car—a Dodge Durango.*

LANCE KOZLOWSKI

sponsorship policy: (1) a statement of the jurisdiction's philosophical position on sponsorship; (2) a definition of terms; (3) an authority structure for reviewing sponsorship proposals; (4) proposal review guidelines; and (5) a delimitation of acceptable message content.<sup>41</sup> (For a sample policy using these elements, see the sidebar on page 32.)

The first element, a statement of philosophical position, is the vehicle by which a local government declares that it will pursue or accept sponsorships and to what extent. This element conveys a consistent message about the intent and the scope of sponsorships within government. The government may choose to express in this

section the types of programs and services for which it will seek or accept sponsorships, its stance on endorsements of organizations or products, and its purpose in accepting or rejecting sponsorships.<sup>42</sup> A well-written statement of philosophical position provides the foundation for the remainder of the policy.

- Commentary, advocacy, or promotion of issues, candidates, and campaigns pertaining to political elections
- Depiction in any form of profanity or obscenity, or promotion of sexually oriented products, activities, or materials
- Promotion of the sale or use of firearms, explosives, or other weapons, or glorification of violent acts
- Promotion or depiction of illegal products, or glorification of illegal products, activities, or materials

**Permissible Recognition Messages**

Sponsorship recognition messages may identify the sponsor but should not promote or endorse the organization or its products or services. Statements that advocate, contain price information or an indication of associated savings or value, request a response, or contain comparative or qualitative descriptions of products,

services, or organizations will not be accepted. Only the following content will be deemed appropriate:

- The legally recognized name of the advertising organization.
- The advertiser's organizational slogan if it identifies rather than promotes the organization or its products or services.
- The advertiser's product or service line, described in brief, generic, objective terms. Generally, only one product or service line may be identified.
- Brief contact information for the advertiser's organization, such as phone number, address, or Internet website. Contact information must be stated in a manner that avoids an implication of urging the reader to action.

Carolina City/County will not make any statements that directly or indirectly

advocate or endorse a sponsor's organization, products, or services.

No materials or communications, including, but not limited to, print, video, Internet, broadcast, or display items developed to promote or communicate the sponsorship using Carolina City/County's name, marks, or logo, may be issued without written approval from the Carolina City/County manager and attorney.

*This sample policy is available as a Microsoft Word document at <http://incinfo.iog.unc.edu/pubs/electronicversions/pg/pgfal03/kay.pdf>.*

The second element enhances the clarity of the policy by defining all the major terms used in the policy. The definitions given should be precise and simple so that people internal and external to the government can readily understand the policy.

Each jurisdiction must determine how extensively it will define terms. Some jurisdictions will want to define every ambiguous term for maximum clarity and control of interpretation. Other jurisdictions will choose to define only the most significant terms in order to avoid cumbersome and superfluous technicalities. In either case the definitions must be comprehensive enough to distinguish sponsorship from other types of nontraditional funding and should help ensure consistent interpretations of key portions of the policy.

The third element provides accountability and structure for review and approval of potential sponsorships. The process should follow clearly delineated steps, and the policy should designate specific offices or officials responsible for making sponsorship decisions. A possible practice offering maximum consistency is to designate a single officer who is responsible for reviewing and approving all sponsorship proposals.<sup>43</sup>

The courts have shown a tendency to offer increased protection from First Amendment challenges to jurisdictions that have a consistent organizational authority review a proposal to determine whether the sponsor fits within the delineated limits of acceptable sponsors and whether the content of the sponsorship message is appropriate.<sup>44</sup> A local government may choose to “stratify” the review-and-approval structure, assigning more important or potentially controversial sponsorship decisions to a higher review-and-approval authority within the organizational structure.<sup>45</sup> Under such a structure, decisions that might be politically controversial are made by the jurisdiction’s manager or governing board, in consultation with the jurisdiction’s legal counsel.<sup>46</sup>

Proposal review criteria, the fourth element of a model policy, designate the standards by which each sponsorship proposal will be judged.<sup>47</sup> To maintain consistent and reliable decision making,

the criteria must be understood and implemented similarly by every reviewing authority within the jurisdiction. Examples of review criteria are the amount of support offered by the sponsor, the extent to which the sponsorship supports the mission of the jurisdiction, the content of the “sponsorship recognition message” (the statement that publicly identifies the contributions of the sponsor and associates the name of the sponsor with the name of the local government), and current or potential conflicts of interest.<sup>48</sup> By using consistent criteria, a jurisdiction strengthens the designation of its sponsorship program as a nonpublic forum and insulates itself from a charge of arbitrary or capricious decisions by disgruntled potential sponsors.<sup>49</sup>

A draft memorandum of understanding that embodies the final terms of a sponsorship relationship should be included.<sup>50</sup> The memorandum should state the items of value given to the local government by the sponsor, the content and extent of the sponsorship recognition message, and any other terms and conditions of the sponsorship.<sup>51</sup> Such a memorandum helps ensure that a potential sponsor and the local government have a common understanding of the terms of the sponsorship, and minimizes confusion.

The fifth element, a statement on subject matter and message content, directly addresses a local government’s need to exercise discretion in choosing between potential sponsors while protecting the First Amendment rights of its citizens. By clearly stating both the impermissible subject matters and the permissible content of messages, a local government can greatly strengthen the designation of its sponsorship program as a nonpublic forum and thereby improve its ability to withstand First Amendment challenges.<sup>52</sup>

The primary method for ensuring that a local government’s sponsorship policy falls within the definition of a nonpublic forum is first to identify in the policy several subject matters that are prohibited and then to enforce these prohibitions consistently.<sup>53</sup> For example, if a local government chooses not to allow tobacco-related sponsorships, it must prohibit sponsors that

advocate tobacco use and those that oppose tobacco use. If a local government desires to prohibit abortion-related sponsors, it must prohibit pro-life and pro-choice sponsors. The prohibited subject matters must not be vague or inconsistently applied. In cases in which jurisdictions have failed in their clarity or consistency, courts have held that the governments intended to open the forum to indiscriminate expressive activity and thereby created a designated public forum.<sup>54</sup>

The controversial social issue of abortion provides a useful example. If a local government chooses to avoid sponsorships relating to abortion, it must refuse all abortion-related speakers and messages, regardless of their position on the issue. That is, it must refuse to accept sponsorships from the National Right to Life Committee, which advocates prohibition of abortion, and from the International Planned Parenthood Federation, which advocates allowance of abortion.<sup>55</sup>

A second method for ensuring that a local government can create and maintain a nonpublic forum for its sponsorship program is to prescribe strictly the acceptable language content of sponsorship recognition messages. These can take multiple forms but are generally “spoken” by the local government in a public announcement, in a news conference, in a media advertisement, on a plaque or a sign, or in another public expression. Courts have ruled that, if a local government carefully controls the content of such messages, it will generally be deemed to have limited the content to such a high degree that the government itself has become the speaker, rather than the sponsor.<sup>56</sup> When the government is the legally recognized speaker, it is freer to control what it will say in its own medium of expression. “The First Amendment does not prohibit the government itself from speaking, nor [does it] require the government to speak. Similarly, the First Amendment does not preclude the government from exercising editorial discretion over its own medium of expression.”<sup>57</sup> Therefore, if a local government takes steps to control the content of sponsorship recognition statements, it will strengthen the

status of its sponsorship program as a nonpublic forum and protect its ability to exercise discretion in choosing among potential sponsors.

## Conclusion

A successful local government sponsorship program generates additional revenue without jeopardizing the government's reputation among its citizens or running afoul of their First Amendment rights. A well-crafted sponsorship policy creates a nonpublic forum and enables a local government to exercise discretion in choosing between potential sponsors on the basis of subject matter. A prudent local government may opt to avoid accepting sponsorships from social or advocacy-related groups entirely. Reasonably chosen and consistently enforced policies that outline a uniform method for evaluating and selecting potential sponsorships, clearly identify prohibited sponsors, and prescribe the permissible content of a sponsorship recognition message, will create a sponsorship program that is effective and legally enforceable. In these ways a local government will be able both to protect its reputation and to generate additional revenue through well-chosen sponsorships and smartly crafted policies.

## Notes

The opinions and ideas expressed in this article are solely attributable to the author and should not be relied on as legal advice. Nothing in this article should be interpreted as conveying the opinions or ideas of Justice Martin or of the Supreme Court of North Carolina. Readers should contact their attorneys for substantive legal advice regarding the matters discussed in this article.

1. A North Carolina company, Government Acquisitions, Inc., reports that more than a dozen local governments in North Carolina have sought sponsorships for police, fire department, rescue, or ambulance vehicles under a program to enhance homeland security. Government Acquisitions provides a list of interested local governments, which can be viewed at [www.governmentacquisitions.com/agencies.asp](http://www.governmentacquisitions.com/agencies.asp).

2. *To Serve and Advertise*, CHICAGO TRIBUNE, Jan. 5, 2003, Chicago Land Final Section, p. 6.

3. "A good name is more desirable than great riches; to be esteemed is better than silver or gold." *Proverbs* 22:1 (NIV).

4. *Corporate Reputation: A Customer Attraction*, in 1999 CONE/ROPER CAUSE-RELATED TRENDS REPORT: THE EVOLUTION OF CAUSE BRANDING (Boston: Cone, Inc., 1999); Susan Gray, *Big Companies Increase Gifts of Cash and Products by 20%*, *Study Finds*, CHRONICLE OF PHILANTHROPY, Dec. 3, 1998, p. 14; NORAH McCLINTOCK, WHY YOU NEED A SPONSORSHIP POLICY AND HOW TO GET ONE (Canadian Centre for Philanthropy, Sept. 1996); Debbie Scheinholtz, *Corporate Social Responsibility*, FORBES, July 26, 1999.

5. The jurisdictions from which data were gathered were Asheville, Charlotte, Durham County, Forsyth County, and Wake County, N.C.; Fairfax County, Va.; Johnson County, Kan.; and Martin County, Fla.

6. Interviews with David Cooke, County Manager, Wake County, N.C., in Raleigh (June 2, 2000); Frank Cope, Administrative Coordinator, County Manager's Office, Wake County, N.C., in Raleigh (May 25, 2000); Robert Sorrels, Director, Human Servs. Dep't, Wake County, N.C., in Raleigh (July 18, 2000). Telephone interviews with Nick Curtis, County Manager's Office, Durham County, N.C. (May 30, 2000); Shannon Flanagan, International City/County Management Ass'n (June 16, 2000); Doris Giesing, Martin County, Fla. (June 1, 2000); Alan Jones, Forsyth County, N.C. (May 29, 2000); Olaf Kinard, City of Charlotte, N.C. (May 25, 2000); Larry McAulay, County Attorney, Johnson County, Kan. (June 29, 2000); Catherine Tuck-Parrish, County Executives' Office, Fairfax County, Va. (July 19, 2000). *MirCorp Teams with GPC International for Commercial Sponsorship and Advertising on Russia's Mir Space Station*, PR NEWSWIRE, July 11, 2000.

7. Interviews with Russ Goff, Director, Information Servs. Dep't, Wake County, N.C., in Raleigh (June 21, 2000); John Ruckavina, Director, Public Safety Dep't, Wake County, N.C., in Raleigh (June 14, 2000).

8. This article does not address the special issues that surround sponsorships targeted at children generally or schools specifically. These issues are worthy of further research as the trend for school-related advertisements and sponsorships continues to grow. Also, the article does not address whether or not a government should engage in sponsorship. A citizenry's tolerance for private involvement in public activities may vary from locality to locality. A local government should carefully consider the citizenry's tolerance for private sponsorship, the administrative feasibility of potential sponsorships, and the costs and benefits related to sponsorships before engaging in them.

9. NATIONAL STRATEGIC ALLIANCES PROGRAM, DEP'T OF CANADIAN HERITAGE, EFFECTIVE PARTNERSHIPS WITH CORPORATE CANADA: POLICY FRAMEWORK, TOOLS AND METHODS (Mar. 1998); QUEENSLAND GOV'T, QUEENSLAND GOVERNMENT SPONSORSHIP POLICY (Queensland, Austl.: Dec. 22, 1999). Sponsorship must be distinguished from four

other nontraditional sources of governmental revenue: (1) grants; (2) sales of a good or a service; (3) volunteerism; and (4) donations. These sources provide a useful analytical framework for understanding the unique role of sponsorship. All of them permit a government to maintain or increase its level of service provision without increasing taxes, fees, or other traditional revenue sources. A grant is funds with a restricted use provided to a government by an external entity. The granting organization does not usually give the funds for the sole purpose of gaining increased name recognition. Sales of a good or a service occur when a government sells goods or services on property under its direct control. A government may sell goods or services itself, or it may permit a private concessionaire to sell goods or services directly on the government's property. A volunteer is a person or a group of people that performs services for a government without compensation and without the expectation of compensation. Donations are any gift of value for which the donor does not expect or require any form of official recognition.

10. AUSTRALIAN NAT'L AUDIT OFFICE, MANAGEMENT OF CORPORATE SPONSORSHIP (Apr. 1997); CANADIAN COUNCIL FOR INT'L COOPERATION, CORPORATE PARTNERSHIP AND SPONSORSHIP POLICY (1998); NATIONAL STRATEGIC ALLIANCES PROGRAM, EFFECTIVE PARTNERSHIPS.

11. *Buying Friends*, THE FINANCIAL TIMES LIMITED (London), Jan. 13, 2000; Interviews with Frank Cope, Russ Goff; *Distiller's Sponsorship of Dallas Theatre Draws Criticism*, DALLAS MORNING NEWS, June 16, 2000.

12. *Avins v. Rutgers State Univ. of N.J.*, 385 F.2d 151 (3rd Cir. 1967); *Barnard v. Chamberlain*, 897 F.2d 1059 (10th Cir. 1990); *Estiverne v. Louisiana State Bar Ass'n*, 863 F.2d 371 (5th Cir. 1989).

13. *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666 (1998); *Cornelius v. NAACP Legal Defense and Educ. Fund*, 472 U.S. 788 (1985).

14. *Arkansas Educ. Television Comm'n*, 523 U.S. 666; *Cornelius*, 472 U.S. 788; *Christ's Bride Ministries v. Southeastern Pa. Transp. Auth.*, 148 F.3d 242 (3d Cir. 1998); *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983). In *Lehman and Perry Education Association*, the plaintiffs also alleged a violation of Fourteenth Amendment privileges. Such challenges, however, strictly depend on whether the plaintiff has been deprived of a federally protected right. If the court finds that the plaintiff's free speech rights have not been violated, the Fourteenth Amendment claims fail because there has been no deprivation of a federally protected right. Therefore the primary issue for ensuring the legal compliance of a sponsorship policy is the protection of First Amendment privileges.

15. The Supreme Court has expressly held that the mere fact that speech is "commer-

cial” does not strip it of First Amendment protection. See *Bigelow v. Virginia*, 421 U.S. 809 (1975). In *Central Hudson Gas v. Public Services Commission*, however, the Court held that commercial speech enjoys less protection than other constitutionally guaranteed expression. *Central Hudson Gas*, 447 U.S. 557, 563 (1980). This article does not address the problem of sponsorship under a commercial speech analysis. However, a brief summary of the analytical approach used in cases involving commercial speech is provided for readers who have an interest in this area. First, in order to qualify for any protection under the First Amendment, the commercial speech at issue must involve legal activity and not be misleading. *Id.* at 566. If the speech satisfies this requirement, a government regulation must then be found to (1) satisfy a substantial governmental interest, (2) directly advance that interest, and (3) not be more extensive than necessary to protect the asserted interest. *Id.* at 568–69.

16. *Christ’s Bride Ministries*, 148 F.3d 242; *Lehman*, 418 U.S. 298; *Planned Parenthood Ass’n v. Chicago Transit Auth.*, 767 F.2d 1255 (7th Cir. 1985).

17. *Perry Educ. Ass’n*, 460 U.S. 37.

18. A “property” includes both physical spaces, such as the interior and the exterior of a city bus, and an airport terminal, and abstract spaces, such as a public school’s internal mail system or a federal government office’s annual charity fund-raising campaign.

19. See *Perry Educ. Ass’n*, 460 U.S. 37.

20. See *id.*

21. See *id.* at 45.

22. *Christ’s Bride Ministries v. Southeastern Pa. Transp. Auth.*, 148 F.3d 242 (3d Cir. 1998); *Planned Parenthood Ass’n v. Chicago Transit Auth.*, 767 F.2d 1255 (7th Cir. 1985).

23. The Court has specifically held that not only does forum doctrine apply to physical spaces but it also transcends physical and spatial confines to include “forums” such as channels of communication. See *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 830 (1995).

24. See *Perry Educ. Ass’n*, 460 U.S. at 45, *Arkansas Educ. Television Comm’n v. Forbes*, 523 U.S. 666 (1998); *Cornelius v. NAACP Legal Defense and Educ. Fund*, 472 U.S. 788 (1985).

25. See *International Society for Krishna Consciousness v. Lee*, 505 U.S. 672 (1992).

26. *Cornelius*, 472 U.S. 788; *International Society for Krishna Consciousness*, 505 U.S. 672.

27. Acceptable regulations on speech include those that restrict only the time, the place, or the manner of speech and do not regulate content. See *International Society for Krishna Consciousness*, 505 U.S. 672. It should be noted that the Supreme Court has identified several types of speech, such as obscenity or incitement of illegal conduct, that are not entitled to constitutional protection under the First Amendment.

28. In two Supreme Court decisions, *Perry Education Association* and *Cornelius*, the Court implied in scattered footnotes and conflicting statements that subject-matter restrictions might be permissible in a designated public forum. See *Perry Educ. Ass’n*, 460 U.S. at 45 n.7; *Cornelius*, 473 U.S. at 802. Both cases, however, offered this language in dicta, as the regulation at issue in both cases was overturned on other grounds. No case has explicitly set forth a comprehensive treatment of limited and designated public forums.

29. Ronnie J. Fischer, “What’s in a Name?: An Attempt to Resolve the ‘Analytic Ambiguity’ of the Designated and Limited Public Fora,” 107 *DICKINSON LAW REVIEW* 639, 646 (2003). Courts are in considerable disarray in sorting out the confusion of “designated” and “limited” public forums. A total of six wholly divergent treatments of the distinction between designated and limited public forums and the standards of review that apply in each have been identified. See *id.* at 657–58.

30. See *id.* at 657–59. Of the twelve circuit courts of appeal, six hold this position, including the First, Third, Sixth, Eighth, Eleventh, and D.C. circuit courts. *Id.* at 658–59. In contrast, a sizeable minority of circuit courts of appeal have held that a limited public forum is a type of designated public forum, and content-based regulations must merely satisfy a “rational basis” standard of review. *Id.* at 662. The Second, Fifth, Seventh, and Ninth circuits follow this approach. *Id.* Under this standard a government may create a limited public forum for the purpose of discussing a specific subject and allow only speech relating to that subject, such as when a city calls a public meeting to solicit comments on a proposed zoning ordinance and limits comments to that subject alone.

31. See *Perry Educ. Ass’n*, 460 U.S. at 45.

32. See *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (stating that speech regulations enacted in nonpublic forum are evaluated on rational-basis standard of review).

33. See *Christ’s Bride Ministries v. Southeastern Pa. Transp. Auth.*, 148 F.3d 242 (3d Cir. 1998); *Lebron v. Washington Metro. Area Transit Auth.*, 749 F.2d 893 (D.C. Cir. 1984); *Planned Parenthood Ass’n v. Chicago Transit Auth.*, 767 F.2d 1255 (7th Cir. 1985).

34. See *Planned Parenthood Ass’n*, 767 F.2d 1255.

35. See *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974); *Christ’s Bride Ministries*, 148 F.3d 242; *Planned Parenthood Ass’n*, 767 F.2d 1255.

36. See *Arkansas Educ. Television Comm’n v. Forbes*, 523 U.S. 666 (1998); *Cornelius v. NAACP Legal Defense and Educ. Fund*, 472 U.S. 788 (1985); *Lehman*, 418 U.S. 298; *Perry Educ. Ass’n*, 460 U.S. 37.

37. Interviews with Shelly Eason, Assistant County Attorney, County Attorney’s Office,

Wake County, N.C., in Raleigh (June 28, 2000); Doug Longhini, Director, Community Servs. Dep’t, Wake County, N.C., in Raleigh (June 14, 2000).

38. See *Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mutual Insurance Co.*, 463 U.S. 29 (1983).

39. See *Christ’s Bride Ministries*, 148 F.3d 242; *Planned Parenthood Ass’n*, 767 F.2d 1255.

40. See *Motor Vehicle Mfrs. Ass’n*, 463 U.S. 29.

41. AUSTRALIAN NAT’L AUDIT OFFICE, MANAGEMENT OF CORPORATE SPONSORSHIP; CANADIAN COUNCIL, CORPORATE PARTNERSHIP AND SPONSORSHIP POLICY; CITY OF RALEIGH, N.C., RALEIGH TRANSIT AUTHORITY GUIDELINES FOR VINYL WRAP EXTERIOR ADVERTISING (July 2000); Interviews with Frank Cope, Doug Longhini; Telephone Interviews with Doris Giesing, Larry McAulay; CORPORATE SPONSORSHIP POLICY, GEORGIA PTA TODAY, June/July 1999; INDEPENDENT COMMISSION AGAINST CORRUPTION, ICAC PRACTICAL GUIDE TO CORRUPTION PREVENTION (Sydney, Austl.: ICAC, 1996); NATIONAL STRATEGIC ALLIANCES PROGRAM, EFFECTIVE PARTNERSHIPS; QUEENSLAND GOV’T, QUEENSLAND GOVERNMENT SPONSORSHIP POLICY; UNIVERSITY OF WISC.–PARKSIDE, CORPORATE SPONSORSHIP OF CAMPUS EVENTS POLICY.

42. CORPORATE SPONSORSHIP POLICY; Interview with David Carter, Director of Recreation and Parks, Community Servs. Dep’t, Wake County, N.C., in Raleigh (June 13, 2000); Interview with Doug Longhini; QUEENSLAND GOV’T, QUEENSLAND GOVERNMENT SPONSORSHIP POLICY; UNIVERSITY OF WISC.–PARKSIDE, CORPORATE SPONSORSHIP OF CAMPUS EVENTS POLICY.

43. AUSTRALIAN NAT’L AUDIT OFFICE, MANAGEMENT OF CORPORATE SPONSORSHIP; CITY OF RALEIGH, N.C., RALEIGH TRANSIT AUTHORITY GUIDELINES; CORPORATE SPONSORSHIP POLICY; NATIONAL STRATEGIC ALLIANCES PROGRAM, EFFECTIVE PARTNERSHIPS.

44. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988); *Lebron v. Washington Metro. Area Transit Auth.*, 749 F.2d 893 (D.C. Cir. 1984); *Planned Parenthood Ass’n v. Chicago Transit Auth.*, 767 F.2d 1255 (7th Cir. 1985).

45. Interview with Frank Cope; UNIVERSITY OF WISC.–PARKSIDE, CORPORATE SPONSORSHIP OF CAMPUS EVENTS POLICY.

46. What constitutes a politically controversial sponsorship warranting approval by the governing board cannot be reduced to abstract criteria. Politically sensitive decisions are highly fact bound and community sensitive and must therefore be entrusted to the discretion of the local government officials involved in reviewing sponsorship proposals.

47. Some jurisdictions may wish to include the review-and-approval authority structure here, rather than as a separate section. For purposes of analysis and discussion, these sections are presented as separate elements.

48. A jurisdiction cannot legally refuse to associate with a potential sponsor merely on the basis of the sponsor's philosophy. Rather, the decision about whether or not to engage in a sponsorship, or permit a given sponsorship recognition message, must be made on the basis of the aforementioned proposal review criteria.

49. See *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974); *cf.* *Christ's Bride Ministries v. Southeastern Pa. Transp. Auth.*, 148 F.3d 242 (3rd Cir. 1998); *Planned Parenthood Ass'n*, 767 F.2d 1255.

50. AUSTRALIAN NAT'L AUDIT OFFICE, MANAGEMENT OF CORPORATE SPONSORSHIP; CANADIAN COUNCIL, CORPORATE PARTNERSHIP AND SPONSORSHIP POLICY; Interviews with David Cooke, John Ruckavina; NATIONAL STRATEGIC ALLIANCES PROGRAM, EFFECTIVE PARTNERSHIPS.

51. CANADIAN COUNCIL, CORPORATE PARTNERSHIP AND SPONSORSHIP POLICY; NATIONAL STRATEGIC ALLIANCES PROGRAM, EFFECTIVE PARTNERSHIPS; QUEENSLAND GOVERNMENT, QUEENSLAND GOVERNMENT SPONSORSHIP POLICY; UNIVERSITY OF WISC.-PARKSIDE, CORPORATE SPONSORSHIP OF CAMPUS EVENTS POLICY.

52. Interview with Larry McAulay; JOHNSON COUNTY, KAN., JOHNSON COUNTY GOVERNMENT ADVERTISING POLICY AND GUIDELINES (1999).

53. Because this step inherently involves making value judgments, it is wise to involve the citizens and elected officials of a jurisdiction in determining what subject matters are inappropriate for government to become involved with in a given community.

54. See *Christ's Bride Ministries v. Southeastern Pa. Transp. Auth.*, 148 F.3d 242 (3d Cir. 1998); *Lebron v. Washington Metro. Area Transit Auth.*, 749 F.2d 893 (D.C. Cir. 1984); *Planned Parenthood Ass'n v. Chicago Transit Auth.*, 767 F.2d 1255 (7th Cir. 1985).

55. Wanda Franz, president of the National Right to Life Committee, states that the purpose of the committee is to advocate for the promotion of a pro-life culture supported by public policy. Wanda Franz, Donation Solicitation Letter (Oct. 18, 2001), available at [www.nrlc.org/donations.htm](http://www.nrlc.org/donations.htm) (last visited July 7, 2003). The International Planned Parenthood Federation states that its core activities and philosophies include advocating for laws and policies that permit safe abortions and eliminating restrictions on safe abortion. INTERNATIONAL PLANNED PARENTHOOD FED'N, STRATEGIC PLAN—VISION 2000 (London: IPPF, 1992).

56. *Knights of the Ku Klux Klan v. Curators of the Univ. of Mo.*, 203 F.3d 1085 (8th Cir. 2000).

57. *Muir v. Alabama Educ. Television Comm'n*, 668 F.2d 1033, 1044 (5th Cir. 1982).

at the  
School



## School Welcomes New Faculty

**W**illow S. Jacobson joined the School faculty in August 2003 as assistant professor of public administration and government, specializing in human resource management, organizational theory, and public management. Earlier she taught in the Master of Public Administration Program at the University of Connecticut. Jacobson also has worked on the Government Performance Project and the New Jersey Initiative at the Alan K. Campbell Institute of the Maxwell School of Citizenship and Public Affairs, Syracuse University, and she has assisted state governments in California and Oregon with strategic planning for community collaboratives. She holds a B.S. and an M.S.P.A. from the University of Oregon and a Ph.D. in public administration from the Maxwell School.

Jonathan Q. Morgan joined the School faculty in August 2003 as instructor in public administration and government, specializing in state, local, and regional economic development. Before coming to the School, he worked for Regional Technology Strategies, Inc., an economic and workforce development consulting firm in Carrboro, North Carolina. He also has served as director of economic policy and research for the N.C. Department of Commerce and research and policy director for the N.C. Institute of Minority Economic

Development. Morgan holds a B.A. in economics from the University of Virginia and an M.P.A. from Clark Atlanta University and is completing a Ph.D. in public administration at North Carolina State University. His dissertation, which is being supported by a grant from the U.S. Department of Housing and Urban Development, focuses on the role of regional industry clusters in urban economic development.

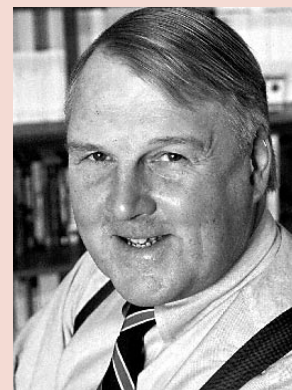
Carl W. Stenberg joined the School faculty in September 2003 as professor of public administration and government, specializing in public leadership. Previously Stenberg was dean and professor of government and public administration at the Yale Gordon College of Liberal Arts, University of Baltimore. He also has served as distinguished professor and director of the Weldon Cooper Center for Public Service, University of Virginia, and as executive director of the Council of State Governments, located in Lexington, Kentucky. The council is a national public interest group and nonpartisan research and service agency representing the executive, legislative, and judicial branches of all state governments. Stenberg holds a B.A. from Allegheny College and an M.P.A. and a Ph.D. from the State University of New York at Albany. He has extensive research and publishing experience and currently serves as chair



Willow S. Jacobson



Jonathan Q. Morgan



Carl W. Stenberg