

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS  
FORT SMITH DISTRICT  
CIVIL DIVISION

JOEY MCCUTCHEN

V

PLAINTIFF

v.

CASE NO. 66CV-21- 401

CITY OF FORT SMITH,  
A municipal corporation

DEFENDANT

**COMPLAINT FOR DECLARATORY JUDGMENT AND FOR ISSUANCE OF A  
WRIT OF MANDAMUS**

COMES NOW the Plaintiff, Joey McCutchen, by and through the undersigned counsel, and for his Complaint for Declaratory Judgment and for Issuance of a Writ of Mandamus against the City of Fort Smith, states as follows:

**Parties, Jurisdiction, and Venue**

1. Plaintiff Joey McCutchen is a citizen and resident of Fort Smith, Sebastian County, Arkansas.
2. Defendant City of Fort Smith is a municipal corporation located in Sebastian County, Arkansas and was formed pursuant to the laws of the State of Arkansas.
3. This Court has subject matter jurisdiction over this Petition for Declaratory Judgment pursuant to the Arkansas Declaratory Judgment Act, A.C.A. § 16-111-101, *et. seq.*
4. Venue is proper in this Court pursuant to Arkansas Code Annotated § 16-111-101, *et. seq.*

5. This is also an action in mandamus pursuant to Arkansas Code Annotated § 16-115-101, and Act 1003, the “Arkansas State Capitol and Historical Monument Protection Act,” which permits residents of the State of Arkansas to petition Arkansas courts to enjoin the unlawful removal of historical monuments.

### **Factual Background**

6. The preceding paragraphs are incorporated by reference herein.

7. On October 12, 2001, the City of Fort Smith dedicated a display of historical flags at the entrance to Riverfront Park. (Exhibit A) The display of historical flags is known as the “Flags over Fort Smith” and commemorates the national flags that governed the Fort Smith area from 1699 to present. (Exhibit B; “Flags over Fort Smith” Dedication Ceremony Flyer) The dedication ceremony involved a narration by Mayor Ray Baker and local historian J. Fred Patton and a Fort Smith Police Honor Guard.

8. The flags were erected by the City of Fort Smith with bronze markers identifying each flag: The French Fleur-Di-Lis flag; the Spanish Cross of Lorraine flag; the Louisiana Territory-French National Flag; the District of Upper Louisiana-French National Flag; the Territory of Louisiana-U.S. 15-Star Flag; the Territory of Missouri-U.S. 20-Star Flag; The Arkansas Territory-U.S. 24-Star Flag; The Confederate State of America Flag; the Present United States Flag. (Exhibit C; Historical Bronze Markers)

9. In September 2020, Plaintiff noticed that all of the historical flags had been removed from the display. Plaintiff requested all written documentation from the City of Fort Smith regarding the removal of the flags through an Arkansas Freedom of Information Act (FOIA) request.

10. Upon information and belief, the bronze markers were also removed from each of the flag posts without any notice to the public whatsoever.

11. According to a June 1, 2020 email exchange between Fort Smith City Administrator Carl Geffken, Deputy City Administrator Jeff Dingman, and Fort Smith Parks Director Doug Reinert, the flags were initially taken down because they were tattered and in need of replacement. (Exhibit D)

12. However, Geffken and Dingman advocated removing all of the historical flags and replacing them with the current U.S. Flag, Arkansas Flag, and City of Fort Smith Flag. In his email, Dingman states:

“Doug

Aren't the historical flags at the Riverfront taken down at the moment?

There's some discussion to take them down, just leaving three flagpoles for the US/Ark/FSM flags and sending the rest of them, along with the interpretation plaque, to the FSM Museum of History.

-Jeff D [Dingman]” (Exhibit D)

13. In his response to Dingman’s email, City Administrator Geffken confirmed that it was his intention to permanently remove the historical flags at Riverfront Park, by stating:

“Thanks Jeff. I will need to let the Board know that we will be moving to three flags at the Riverfront Park.  
Thanks,

Carl [Geffken]” (Exhibit D)

14. City Administrator Geffken’s decision to permanently remove the historical flags was not communicated to the public at the time of the abovementioned emails.

15. In an email dated September 4, 2020, City Administrator Geffken elaborated on his reasoning for the permanent removal of the historical flags in response to Facebook content posted by Plaintiff. In his email, Geffken states:

“Mayor and Directors,

First I need to thank Doug for sending this e-mail to Jeff and me in response to last night’s Facebook post. Jeff, Doug, and I have received telephone calls and e-mails and I have received posts to my Facebook page. As Doug's e-mails states, the flags that have been flown since 2001 and are shown in the attached PDF were ordered but like everything else the delivery has been hampered by COVID. The price proposal from a local vendor shows a March 10 date.

After the death of George Floyd and the subsequent unrest in the United States, we discussed changing the flags that are flown at Riverfront Park and in my prior e-mail I described two options.

In summary, no one took the flags down recently – they were taken down 6 months ago, the United States, State of Arkansas, and Fort Smith flags will be flown at Riverfront Park at a minimum, I am not desecrating Southern history in fact I am trying to maintain a piece of history from potential harm, and I am trying to look out for the future of Fort Smith.

Thanks,

Carl [Geffken]” (Exhibit E)

16. The City then released a letter, stating in part that it was “. . . reconsidering the re-installation of the historical flags and approaching the re-installation plan with sensitivity and empathy for many who find the historical association with the confederate flag hurtful or hateful.” (Exhibit F)

17. The abovementioned letter also contains a timeline indicating that the historical flags were removed back in April 2020. Interestingly, the timeline does not provide any information about when the bronze markers were removed.

18. The City’s inaction confirms that it does not intend to replace these historical flags. Furthermore, City Administrator Geffken has recently proposed replacing the historical flags with U.S. Military Flags. (EXHIBIT G) While it is commendable to honor our troops and veterans, the City must not do so by unlawfully displacing other historical monuments. There are plenty of other



locations, like the Fort Smith Gateway Park, that would serve as an ideal location for the U.S. Military Flag display.

### **Count I: Declaratory Judgment**

19. The preceding paragraphs are incorporated by reference herein.

20. Act 1003, the “Arkansas State Capitol and Historical Monument Protection Act,” (hereinafter referred to as “The Act”) was signed into law on April 29, 2021, and is now codified at Arkansas Code Annotated §22-3-2101-2106.

21. Arkansas Code Annotated §22-3-2104(a)(1) states, “A historical monument shall not be *relocated*, vandalized, damaged, destroyed, *removed*, renamed, *rededicated*, or otherwise *disturbed*.” [emphasis added]

22. Arkansas Code Annotated §22-3-2102(1)(A) defines a historical monument as follows:

“(1)(A)“Historical Monument” means a statute, memorial, gravestone plate, plaque, or *historic flag display* that is located:

- (i) On *public property* and was installed, erected for, or named or dedicated in honor of a historical person, *historical event*, public service organization, firefighter, police officer, military organization, or military unit. . .” [emphasis added]

23. The Act applies to historical monuments that were removed prior to its passage pursuant to Ark. Code Ann. § 22-3-2105(c)(2).

24. Arkansas Code Annotated § 22-3-2104(a)(1)(5) mandates that a damaged flag that is part of a historical flag display must be replaced with a similar flag.

25. Pursuant to Ark. Code Ann. § 22-3-2104(a)(3), a public entity that has removed a historical monument must apply for a waiver with the Arkansas History Commission if the monument is removed for greater than sixty days.

26. The “Flags over Fort Smith” flag display is clearly a historical monument as defined by The Act. The flag display was erected on public property to commemorate and honor various Fort Smith historical events.

27. Because the City of Fort Smith removed the historical flags and bronze markers for over sixty days without replacing them or obtaining a waiver, it is in violation of The Act.

28. It is clear that the City does not intend to replace the historical flags and bronze markers. According to an email (Exhibit H) and Opinion Letter (Exhibit I) written by City Attorney Colby Roe, it is the City’s position that The Act is inapplicable.

29. Pursuant to the Arkansas Declaratory Judgement Act, Arkansas Code Annotated §16-111-101, et seq., this Court should enter a declaratory Judgment that the removal of the historical flags and bronze markers by the City of Fort Smith is a violation of the Arkansas State Capitol and Historical Monument Protection Act.

#### **Count II: Writ of Mandamus**

30. The preceding paragraphs are incorporated by reference herein.

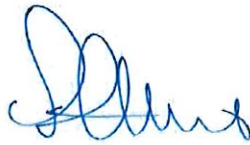
31. Pursuant to Ark. Code Ann. § 22-3-2105(b), a court may enjoin violations or noncompliance with the provisions of The Act upon petition by a resident of the State of Arkansas.

32. A writ of mandamus is the only practical method of enforcing the provisions of The Act, and is an appropriate remedy to compel the City of Fort Smith to immediately replace the historical flags and reinstall the bronze markers. Furthermore, it is an appropriate remedy to compel the City of Fort Smith to refrain from unlawfully removing, replacing, or altering the “Flags over Fort Smith” monument in the future.

33. A writ must be issued to ensure that the provisions of The Act are followed.

WHEREFORE, Plaintiff prays that this Court will issue enter a declaratory judgment that the City of Fort Smith is in violation of The Act; issue a writ of mandamus compelling the City of Fort Smith to immediately replace the flags and markers and enjoin any future violations of The Act; and for such other relief as this Court deems just and proper.

Respectfully submitted,  
Plaintiff, by his attorney,



---

Stephen Napurano (ABA#2017071)  
McCutchen Sexton Napurano – The Law Firm  
P.O. Box 1971  
Fort Smith, AR 72902  
Phone (479) 783-0036  
Facsimile (479) 783-5168














EXHIBIT

A





## FLAGS FLOWN OVER FORT SMITH

-  1699-1766 French Rule - Fleur De Lis Flag
-  1767-1803 Spanish Rule - Spanish Cross of Laurels Flag
-  1803 Louisiana Territory - French Tricolor Flag
-  1804 District of Upper Louisiana - French Tricolor Flag
-  1805-1812 Territory of Louisiana - US Flag (15 Stars)
-  1812-1819 Territory of Missouri - US Flag (20 Stars)
-  1819-1836 Arkansas Territory - US Flag (24 Stars)
-  1861-1863 Confederate States of America - Confederate Flag
-  1863-Present State of Arkansas - US Flag (50 Stars)

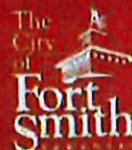
Friday, Oct. 12th, 2001

10:00 A.M.

Fort Smith River Park

(Rain Date: Oct. 26)

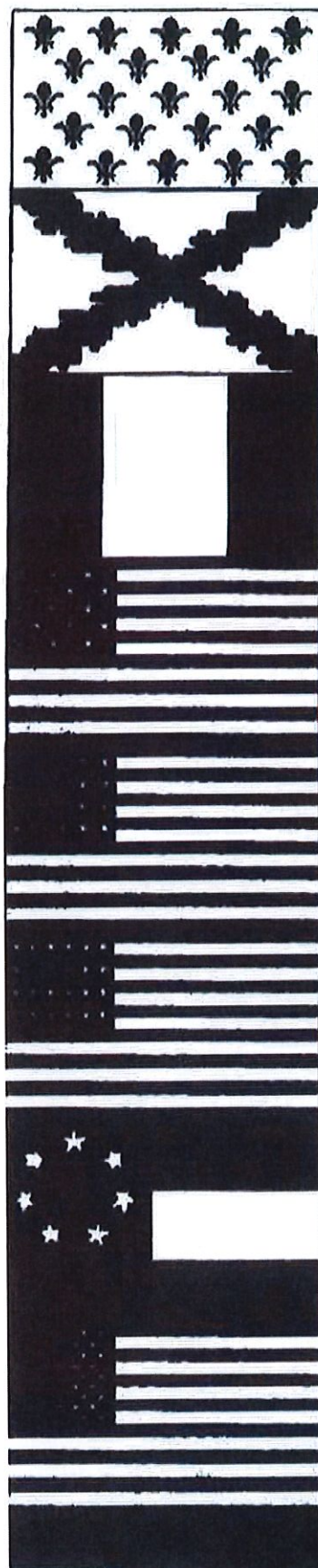
Join Mayor Ray Baker and Fort Smith historian J. Fred Patton for the dedication ceremony of "Flags Over Fort Smith." Live the history and see the raising of all of the flags flown over Fort Smith during the last 302 years. This impressive ceremony is free and the public is encouraged to attend.



EXHIBIT

B





# Flags OVER FORT SMITH

**Dedication Ceremony**

Friday, October 12th  
beginning at 10:00 a.m.

Fort Smith River Park,  
Parking Lot Entrance

## Events include:

- Narration by Mayor Ray Baker and J. Fred Patton
- Raising of the seven national flags that governed this area from 1699 to the present
- Fort Smith Police Honor Guard
- Reception in the Events Building following the ceremony

These flags were flown over this territory, which now includes Fort Smith, by the ruling governments of the period:

1682-1763 French Fleur-De-Lis  
1763-1800 Spanish Cross of Lorraine  
1803 Louisiana Territory-French National Flag  
1804 District of Upper Louisiana-French National Flag  
1805-1812 Territory of Louisiana-U.S. 15-Star Flag  
1812-1819 Territory of Missouri-U.S. 20-Star Flag  
1819-1836 Arkansas Territory- U.S. 24-Star Flag  
1861-1863 Confederate States of America  
1863 to Present United States Flag

Fort Smith & area Schools are invited to attend

This message brought to you by the DAILY RECORD





EXHIBIT

C



LOUISIANA  
CARVED OUT OF  
LOUISIANA PURCHASE - 1803  
US FLAG - 15 STARS





ARKANSAS

FROM

MISSOURI TERRITORY - 1820

US FLAG - 24 STARS



MISSOURI

FROM

LOUISIANA TERRITORY - 1812

18 FLAG - 20 STARS



SPAIN

GIVEN BY FRANCE - 1763

SPANISH CROSS OF  
BURGUNDY (LORRAINE)







A yellow cylindrical marker, possibly a surveying or survey point, with blue text. The marker is mounted on a metal pole. The text is embossed or painted in a serif font. The background shows a blurred outdoor scene with greenery and a building.

FRANCE

LASALLE - 1682

FRENCH FLEUR-DE-LA

**From:** Geffken, Carl <CGeffken@FortSmithAR.gov>  
**Sent:** Monday, June 1, 2020 6:23 PM  
**To:** Dingman, Jeff  
**Subject:** RE: Flagpoles at the riverfront

Thanks Jeff. I will need to let the Board know that we will be moving to three flags at the Riverfront Park.

Thanks,  
Carl

Carl E. Geffken  
City Administrator  
City of Fort Smith  
623 Garrison Avenue  
Fort Smith, AR 72901  
Office: 479-784-2201  
Mobile: 479-561-1510  
Fax: 479-784-2430  
cgeffken@fortsmithar.gov  
www.fortsmithar.gov

From: Dingman, Jeff  
Sent: Monday, June 1, 2020 3:10 PM  
To: Geffken, Carl <CGeffken@FortSmithAR.gov>  
Subject: Flagpoles at the riverfront

Carl - FYI regarding the flagpoles at the riverfront

- Jeff.D

From: Reinert, Doug  
Sent: Monday, June 1, 2020 2:00 PM  
To: Dingman, Jeff <JDingman@FortSmithAR.gov>  
Subject: RE: flags

That is correct they are down. The historical flags need to be replaced and are a special order and hard to get. They were on back order then the factory closed temporarily due to Covid. We have been waiting six months. The large flag over the skate park is down also. The large flag has a broken part that is also on back order.

Let me know if you want the identified flag poles taken down, I will make it so.

Douglas S. Reinert  
Director  
Fort Smith Parks and Recreation

"Doing the Greatest Good for the Greatest Number of People in the Long Run"- Gifford Pinchot

**EXHIBIT**

**D**

From: Dingman, Jeff  
Sent: Monday, June 1, 2020 1:38 PM  
To: Reinert, Doug <DReinert@FortSmithAR.gov>  
Subject: flags

Doug -

Aren't the historical flags at the Riverfront taken down at the moment?

There's some discussion to take them down, just leaving three flagpoles for the US/Ark/FSM flags and sending the rest of them, along with the interpretation plaque, to the FSM Museum of History.

- Jeff.D

**Geffken, Carl** <CGeffken@fortsmithar.gov>

Fri, Sep 4, 2020, 9:48 AM

to Board of Directors Email Group, Baker, Danny (Chief of Police), Reinert, Doug, Cooper, Shari, Mathis, Wendy, Storm, Jurena

Mayor and Directors,

First I need to thank Doug for sending this e-mail to Jeff and me in response to last night's Facebook post. Jeff, Doug, and I have received telephone calls and e-mails and I have received posts to my Facebook page. As Doug's e-mails states, the flags that have been flown since 2001 and are shown in the attached PDF were ordered but like everything else the delivery has been hampered by COVID. The price proposal from a local vendor shows a March 10 date.

After the death of George Floyd and the subsequent unrest in the United States, we discussed changing the flags that are flown at Riverfront Park and in my prior e-mail I described two options.

In summary, no one took the flags down recently – they were taken down 6 months ago, the United States, State of Arkansas, and Fort Smith flags will be flown at Riverfront Park at a minimum, I am not desecrating Southern history in fact I am trying to maintain a piece of history from potential harm, and I am trying to look out for the future of Fort Smith.

Thanks,

Carl

Carl E. Geffken

City Administrator

City of Fort Smith

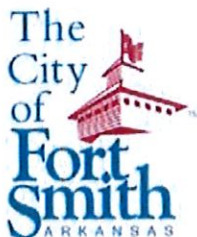
623 Garrison Avenue

Room 315

Fort Smith, AR 72901







## RIVERFRONT FLAGS

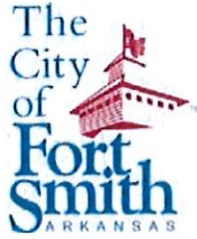
### BACKGROUND

In October 2001, the City dedicated a display of historical flags at the City's Riverfront Park (**please see attached**). The display of flags included territorial flags that were flown over the City of Fort Smith by various ruling governments of the period, including as:

1. French Fleur-De-Lis Flag (1682-1763);
  2. Spanish Cross of Burgundy Flag (1763-1800);
  3. French National Flag (1803 Louisiana Territory);
  4. U.S. 15-Star Flag (1805-1812 Territory of Louisiana);
  5. U.S. 20-Star Flag (1812-1819 Territory of Missouri);
  6. U.S. 24-Star Flag (1812, Arkansas from Missouri Territory); and the
  7. Confederate States of America Flag (1861-1863).
- Riverfront Park also hosts three other flag poles that display the American flag and Arkansas state flag. The poles are located on both sides of the Riverfront Park facility, and in front of the bike and skate park.
  - City Parks Department Staff takes responsibilities for maintaining all flags on City property. The Parks Department follows formal flag etiquette and protocols on its flag inventory, and spends approximately \$4,000 per year in flag maintenance and replacement.

### FLAG REMOVAL TIMELINE

- January 2020, Parks staff surveyed the condition of all of the flags at the Riverfront Park and noted several of the flags were faded and tattered.
- February 2020, Park Staff began the procurement process required to replace the historic flags at Riverfront Park.
- March 2020, park staff confirmed an order to replace several of the flags; which included an order of the two U.S. flags, one State of Arkansas flag, one 20-star American flag, and one Spanish Cross of Burgundy flag. The vendor could not supply a replacement for the confederate flag because their manufacturer no longer produced confederate flags.
- April 2020, in keeping with flag-flying protocol, Parks staff temporarily removed all of the flags in the historical display, as well as the large U.S. flag that flew near the skate park, because the flags needed replacing due to their tattered and weathered condition.
- July 2020, Parks staff placed an order for a weighted cable needed to re-install and fly the U.S. flag near the skate park. Earlier this week, the large U.S. flag near the skate park was reinstalled.
- The historic flags that were ordered in March 2020 have not been received yet due to a vendor error. Parks staff estimates the arrival of these flags by the end of next week.
- In light of recent racially historic events that have taken place across the country, the City is reconsidering the re-installation of the historical flags and approaching the re-installation plan with



sensitivity and empathy for many who find the historical associations with the confederate flag hurtful or hateful.

- Parks staff continues to have discussion with the City Administrator on how to reinstate the flag display at Riverfront Park, while best serving the Fort Smith community. No final decision or recommendation has been made at this time.

####



# TIMES RECORD

## NEWS

# City Administrator: Flags of U.S. military branches to fly at Fort Smith Riverfront Park

**John Lovett** Fort Smith Times Record

Published 6:02 a.m. CT Jun. 2, 2021

Flags that represent the five branches of military service could soon replace the flags of nations that once flew at the Riverfront Park in Fort Smith.

Fort Smith City Administrator Carl Geffken said the flags representing the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard will fly next to the United States flag at the park. The date for the new flags to be raised has not been made.

The action follows a May 19 request from Fort Smith attorney Joey McCutchen to oblige the Arkansas State Capitol and Historical Monument Protection Act (Senate Bill 553, now Act 1003 of 2021) and replace the flags that flew at Riverfront Park from October 2001 to April 2020. Those flags represented nations once in control of land now known as Arkansas: France, the United States of America, and the Confederate States of America.

The city has stated the flags were taken down "due to age and condition."

A May 25 letter to Geffken from Colby Roe of Daily & Woods law firm in Fort Smith states that after review of the Arkansas State Capitol and Historical Monument Protection Act there are "serious doubts as to whether the Riverfront Park flag display would be characterized as a 'historical monument' under the Act."

"We do not believe it to have been 'installed, erected for, or named or dedicated in honor of a historical person, historical event, public service organization, firefighter, police officer, military organization, or military unit,'" the letter says, quoting the Act 1003 definition of a historical monument. "However, assuming for the sake of argument that the flag display could have been once characterized as a 'historical monument,' we do not think the Act applies in any event."



"At some point after the flags' removal the brass markers were removed" and the flag display has not existed since then, Roe's letter adds.

McCutchen said the flag display does qualify as a historical monument because the flags represent a "historical event." He says the removal of the flags was an attempt to erase history without public input. He now plans to file a lawsuit.

"What the city lawyers are doing is guaranteeing we will file suit for a declaratory judgment and ask the city to declare as the reading from the statute that this is a historical monument," McCutchen said. "It's more lack of transparency in city government."

The seven flags were erected at Riverfront Park by the city in October 2001 with a brass marker identifying each flag at its base: The French Fleur-Di-Lis flag; the Spanish Cross of Lorraine flag; the French tri-color flag; the U.S. flag with 15 stars; the U.S. flag with 20 stars; the U.S. flag with 24 stars; and the Confederate States of America flag depicting a circle of seven stars with red and white stripes, also known as the Confederate First National flag.

"If they are not historical events then what are they," McCutchen said of the flags, noting the bronze plaques were "secretly removed."

Roe noted the flag display at Riverfront Park did not exist on the effective date of April 28, 2021, when Act 1003 went into effect. However, McCutchen said Act 1003 gives retroactive status to the flag display.

"We think the cancel culture is alive and well in our city administration, not only canceling the Confederate flag, but also the French, Spanish and American flags," McCutchen added. "They need to put the brass markers back up, and the flags ... The flag poles are still there. This clearly applies retroactively. The legislature overwhelmingly passed it, with an emergency clause so it had a two-thirds vote and became law immediately."

In a September 2020 Times Record guest editorial titled "Where does it end?," McCutchen explained that in October 2001, then-Fort Smith Mayor Ray Baker and Fort Smith historian J. Fred Patton led a dedication ceremony of historic flags to "live the history and see the raising of all the flags flown over Fort Smith during the last 302 years."

"Fort Smith was occupied by the Confederate States of America from 1861 to 1863 and the Confederate First National flag flew over Fort Smith during that time. That's Fort Smith history," McCutchen wrote.

In the guest editorial, McCutchen noted that on June 1, 2020, six days after the death of George Floyd, Geffken sent an email to Fort Smith Deputy City Administrator Jeff Dingman asking him "to let the Board know that we will be moving to three flags at Riverfront Park." McCutchen called it a "unilateral decision" that upset many citizens because it was done in a "non-transparent manner."

"It's more than about the removal of the Confederate flag," McCutchen said. It's about the removal of our American history that goes back to Spain and France in the cover of darkness. They never had any intention of replacing the flags."



**From:** Colby Roe [mailto:[croe@dailywoods.com](mailto:croe@dailywoods.com)]  
**Sent:** Wednesday, May 26, 2021 3:44 PM  
**To:** Joey McCutchen <[jmccutchen@mccutchenlawfirm.com](mailto:jmccutchen@mccutchenlawfirm.com)>; Jerry Canfield  
<[jcanfield@dailywoods.com](mailto:jcanfield@dailywoods.com)>  
**Cc:** Geffken, Carl (CGeffken@FortSmithAR.gov) <CGeffken@FortSmithAR.gov>  
**Subject:** RE: [EXT]River Park Historic Flag Display

Joey,

After further review of the act, we issued the attached opinion on the matter to the City yesterday. The City concurs in our opinion as to the inapplicability of the act.

Colby T. Roe

Daily & Woods, PLLC

P.O. Box 1446

Fort Smith, AR 72902

(479) 782-0361 (telephone)

(479) 782-6160 (fax)

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TELEPHONE (479) 782-0361  
FAX (479) 782-6160

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JAMES E. WEST  
OF COUNSEL

HARRY P. DAILY (1886-1965)  
JOHN P. WOODS (1886-1976)  
JOHN S. DAILY (1912-1987)  
BEN CORE (1924-2007)

WRITER'S E-MAIL ADDRESS  
[CRae@DailyWoods.com](mailto:CRae@DailyWoods.com)

May 25, 2021

Mr. Carl E. Geffken  
City Administrator  
City of Fort Smith, Arkansas  
[cgeffken@fortsmithar.gov](mailto:cgeffken@fortsmithar.gov)

Re: Arkansas State Capitol and Historical Monument Protection Act

Dear Mr. Geffken:

We have reviewed the Arkansas State Capitol and Historical Monument Protection Act ("the Act") in light of the recent request for the City to replace the flag display at Riverfront Park.

Our understanding of the Riverfront Park flag display is noted below.

In October, 2001, the City erected a display of seven flags at Riverfront Park, said flags representing the "flags flown over Fort Smith" since 1699. Those flags included:

1. The French Fleur-De-Lis Flag;
2. The Spanish Cross of Lorraine Flag;
3. The French Tri-Color Flag;
4. The U.S. Flag (15 stars);
5. The U.S. Flag (20 stars);
6. The U.S. Flag (24 stars); and
7. The Confederate States of America Flag (Confederate circle of seven stars and stripes flag).

In addition to the erection of these flags, the City placed a brass marker identifying each flag at its base. In April, 2020, the City removed the above flags due to age and condition. At some point after the flags' removal, the brass markers were removed. The flag display has not existed since the removal.

We understand that the Governor approved the Act on April 28, 2021 and, therefore, it became effective on that date due to the inclusion of an emergency clause. The Act defines "historical monument," in part, as:

a statue, memorial, gravestone plate, plaque, or historical flag display that is





located on public property and was installed, erected for, or named or dedicated in honor of a historical person, historical event, public service organization, firefighter, police officer, military organization, or military unit . . . .

The Act further provides:


A historical monument in existence on the effective date of this act is considered a historical monument for the purposes of this subchapter.

A historical monument not currently displayed by a public entity is considered a historical monument for the purposes of this subchapter.

We have serious doubts as to whether the Riverfront Park flag display would be characterized as a "historical monument" under the Act because we do not believe it to have been "installed, erected for, or named or dedicated in honor of a historical person, historical event, public service organization, firefighter, police officer, military organization, or military unit." However, assuming for the sake of argument that the flag display could have been once characterized as a "historical monument," we do not think the Act applies in any event. Because the City removed the flags in April 2020, there was no "historical monument" in existence on the effective date of the Act (April 28, 2021). Therefore, it is our opinion that the Act is inapplicable to the flag display that once existed at Riverfront Park..

Thank you for your attention to this matter.

Very truly yours,



Colby T. Roe  
cmm