

AACS LEGAL REPORT

POLITICAL ACTIVITIES:

"HOW DOES OUR STATUS AS A TAX-EXEMPT MINISTRY IMPACT OUR ABILITY TO PARTICIPATE IN THE POLITICAL PROCESS?"

I. INTRODUCTION

Under current federal law, churches are considered to be "tax-exempt organizations" under Section 501(c)(3) of the Internal Revenue Code. For that reason, churches are not required to pay federal income taxes, and gifts to churches are tax deductible.

Similarly, AACS schools that operate under the umbrella of a church ministry enjoy the same tax-exempt status as their sponsoring church. Those AACS schools that do not operate under the umbrella of a church ministry must file a formal application with the Internal Revenue Service ("IRS") seeking tax-exempt status. These applications are routinely approved on the basis that the independent school is a religious or educational organization that qualifies for tax-exempt status under Section 501(c)(3).

As a school administrator or pastor, you should be familiar with certain rules that apply to your tax-exempt ministry in the area of political activities - especially during campaign season. In particular, and as discussed below, your ministry is prohibited from participating in political campaigns. Nevertheless, your ministry is allowed - in a limited way - to engage in other types of political activities.

In this Legal Report, we will discuss the "dos and don'ts" relating to tax-exempt ministries and the political process. If your ministry refuses to follow the rules discussed in this Report, then the tax-exempt status of both the church and the school may be at risk. As you know, if your

ministry loses its tax-exempt status, then contributions to the church and to the school will not be tax deductible.

II. DISCUSSION

During the 1992 election, a local church became concerned about the moral character of a certain presidential candidate. In an effort to voice its opinion concerning this candidate, the church procured full page advertisements in the *Washington Times* and in *USA Today* which stated in part, "Christian Beware: Do not put the economy ahead of the Ten Commandments." These advertisements also informed the public that this candidate supported abortion on demand, homosexuality, and the distribution of condoms to teenagers in public schools.

Shortly after the advertisements were published, the IRS notified the church that it would be conducting an investigation concerning the political activities of the church. Following the investigation, the IRS revoked the tax-exempt status of the church on the grounds that the church had violated federal law by "publishing or distributing a statement in opposition to a candidate for public office."

Three months after the revocation letter was issued, the church filed a federal lawsuit claiming that the revocation of its tax-exempt status was improper. Recently, a federal court sided with the IRS and upheld the revocation. In particular, the court held that the IRS had acted properly in revoking the tax-exempt status of the church because the church had engaged in partisan political activity in violation of Section 501(c)(3).

This true story highlights the penalty that can be imposed when a church or religious school actively engages in a political campaign. As shown below, however, the absolute prohibition that applies to political campaigns does not apply to other types of political activities, such as attempts to influence legislation on a local, state or national level.

A. The Big Distinction - Political Campaigns v. Attempts to Influence Legislation.

"Political activities" can be separated into two broad categories: (1) political campaigns, and (2) attempts to influence legislation. In connection with 501(c)(3) organizations, different rules apply to the two different categories.

1. Political campaigns

Simply stated, tax-exempt ministries are prohibited from participating in "any political campaign on behalf of any candidate for public office." This prohibition means that a tax-exempt organization should not campaign for or against a candidate for public office, at any level of government. In particular, a Christian school or church should not engage in the following activities:

- Contributing to political campaign funds;
- Making public statements - either in school or church publications or during official school or church functions - that are in favor of or in opposition to a particular candidate for public office;
- Endorsing a candidate for office;
- Engaging in fund raising activities on behalf of a candidate;
- Distributing political materials on behalf of a candidate;
- Utilizing school or church facilities on behalf of or in opposition to a candidate; or
- Running newspaper advertisements urging voters to vote for or against a particular candidate.

a. What about allowing a candidate to speak at the school?

This activity is acceptable as long as certain guidelines are followed. By way of background, the *IRS Tax Guide for Churches* states that a church may not provide a forum for the expression of a

candidate's views on a partisan basis. On the other hand, the IRS has determined that it is permissible to invite all candidates for a political office to address a church congregation. Of course that raises the question, "what if the only candidate who accepts the invitation is the candidate the church would favor?"

One thing to keep in mind is that a candidate can always deliver a sermon, lead in prayer, read from the Scriptures, or give a word of personal testimony during a school or church function. A problem arises, however, when the candidate uses this opportunity to ask for money or for volunteer support to be used in his or her campaign.

If you do plan to have candidates address the school or church during an ongoing political campaign, then you may want to invite all candidates running for a particular office to come and speak on a certain date. Another good practice to follow is to inform the audience that the school or church is not officially endorsing the candidate simply because he or she is being given the opportunity to speak. Finally, if the IRS does question your ministry about this practice, you may be able to rely on the fact that numerous elected officials have addressed church and school audiences in recent years (including our current President and Vice-President) without any actions being taken by the IRS.

b. What about voter guides?

A tax-exempt ministry may distribute a compilation of voting records of all members of a legislative body on major issues involving a wide range of subjects. Nevertheless, the voter guides should contain no editorial opinions concerning the candidates, and, other than the voting records themselves, the contents of the voter guide should not imply approval or disapproval of any particular candidate for office. In addition, a tax-exempt organization cannot distribute a voter guide

that contains questions or statements demonstrating a bias on a particular issue. Because of the national attention that has been given to the issue of voter guides within the past few years, you should be careful in monitoring the contents of any voter guides that are distributed in your schools and churches.

2. Attempts to influence legislation

The second major category of political activity is the attempt to influence legislation - often referred to as "lobbying." While federal law strictly prohibits tax-exempt organizations from becoming involved in political campaigns, this same restriction does not hold true for attempts to influence legislation.

In particular, tax-exempt ministries may engage in attempts to influence legislation as long as these attempts do not constitute a "**substantial part**" of the activities of the organization. Accordingly, schools and churches can devote a small portion of their time and resources toward efforts to influence legislation. Such efforts include, among others, contacting members of a legislative body for the purpose of proposing, supporting, or opposing legislation; urging the public to do the same; and otherwise advocating the adoption or rejection of certain legislation.

The IRS has not established a hard and fast rule with respect to the definition of what constitutes a "substantial part" of the activities of a tax-exempt organization in the area of influencing legislation. One federal appellate decision holds that attempts to influence legislation that constitute only 5% of the total endeavors of the organization are not a "substantial part" of the organization's activities. In a later case, a different federal court denied tax-exempt status to an organization noting that approximately 20% of its activities were political in nature.

Based on these cases, the undefined guidelines seem to be as follows:

- attempts to influence legislation that constitute 5% or less of a ministry's total activities will not be considered to be "substantial" for purposes of Section 501(c)(3);
- attempts to influence legislation that constitute 20% or more of a ministry's total activities will be considered to be "substantial" for purposes of Section 501(c)(3); and
- attempts to influence legislation that constitute between 5% and 20% of a ministry's total activities are in a "gray area" for purposes of Section 501(c)(3).

B. How does this impact "individual" activities.

The rules that have been discussed above apply to religious schools, churches, and other 501(c)(3) organizations. **They do not apply to political activities in which you may engage as an individual.** For that reason, you may - as an individual - contribute to political campaigns, endorse political candidates, participate in fundraising on behalf of candidates, and engage in other political activities that are "off limits" for schools and churches.

Please be aware, however, that if you endorse candidates and participate in political campaigns in a school chapel service or from a pulpit, then your statements and activities may be "attributed" to the school or to the church. Even if you claim that you are making your comments as an "individual," the IRS may consider the comments to represent the official position of the school or the church. For this reason, you should be cautious about making political endorsements in any forum where you may be representing the school or the church in an official capacity.

III. CONCLUSION

Federal law prohibits tax-exempt organizations - such as Christian schools and churches - from participating in political campaigns. This prohibition includes contributing to political campaigns, publicly endorsing candidates, and engaging in fundraising activities on behalf of

candidates. Although you are free to participate in political campaigns as an individual, you must be careful that your individual activities are not "attributed" to the school or to the church.

If you have questions or comments concerning the issues raised in this Legal Report, please feel free to contact Steve Cummings at the AACCS Legal Hotline number in Atlanta, Georgia - (770) 724-0900.