

CHURCHES AND POLITICS: RECIPE FOR TROUBLE

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Churches enjoy an exemption from federal income tax. As with any benefit given by Uncle Sam, this privilege comes with conditions that must be met if the church expects to enjoy the exemption. One of the key conditions of the Federal income tax exemption relates to politics. The IRS recently released a report concerning political activity by tax-exempt organizations during the 2004 election. From this report, churches can better ascertain allowable political activity and contrast it with political activity that may cost the church its tax-exempt status. For purposes of this article, I will include “churches” in the definition of “religious organizations.”

WHAT IS PROHIBITED?

Internal Revenue Code section 501(c)(3) was amended in 1954 to prohibit all forms of political activity by charitable and religious organizations. Political activity is defined as anything that helps or hinders a candidate for an elected public office. In an exception to the above definition, a charitable or religious organization may engage in voter education, get out the vote drives, and voter registration drives as long as these activities are nonpartisan.

Political activity should also be distinguished from lobbying. Lobbying is defined as attempting to influence the vote of an elected official on an issue. Charitable and religious organizations may engage in lobbying as long as it is not a substantial portion of their activities and finances. Sometimes problems arise when a candidate is closely related to a particular political issue. If the religious or charitable organization tells its members to support candidates who support a particular political issue, that statement can be treated as political activity.

As this brief discussion demonstrates, the law is not always clear. The IRS identified that “confusion” exists on this issue among churches. In many cases, churches had interpreted the phrase to mean that the church was prohibited from expressly endorsing candidates. As a result, many pastors avoided the language of a direct endorsement but, nevertheless, clearly expressed indirect endorsement or opposition concerning a particular candidate.

THE NUMBERS

After receiving complaints from the public and the media, the IRS opened investigations of 110 religious and charitable organizations (47 were churches). The IRS has closed 82 of the investigations. The remaining cases are still open. The IRS reported that 37 of the 47 churches violated the prohibition on political activities.

The IRS issued written warnings to 68% of those organizations that it believes violated the law. The IRS issued written warnings instead of imposing more serious sanctions because (1) the violation involved a single instance and was of a non-recurring nature, (2) the action was taken in good faith, in reliance on written advice from an attorney, (3) the organization immediately took corrective action to recover wrongfully expended funds, and (4) established policies and procedures to prevent future violations.

THE VIOLATIONS

Among the most common violations, out of the 19 complaints received by the IRS, the IRS determined that 12 ministers used the pulpit to endorse or oppose a candidate for office. The IRS said the cases stretched across the political spectrum and were not associated with Republicans or Democrats. Ministers may not use their sermons to help or hinder any candidate.

The IRS received complaints that 19 churches distributed written materials that constituted political activity. In nine cases, churches' written materials were designed to influence people to vote in favor of or in opposition to a particular candidate. The printed materials included newsletters, church bulletins, and letters to members.

Out of the 11 instances of candidate speaking at a church event, the IRS found violations in nine cases. The churches showed preferential treatment towards a particular candidate by allowing them to speak at one or more functions. Churches may invite candidates for public office to speak at church services as long as all candidates for that particular office are extended the same invitation. It is not a violation of law if only some of the candidates accept the invitation.

The IRS investigated 14 instances where a voter guide was improperly distributed by a church. The IRS determined that 4 of the guides violated the prohibition on political activity. Sometimes the guides were made available on a table or by a link on the church's web site. If a voter guide lists fewer than eight issues and/or demonstrates a bias in favor of one candidate or the other, then the voter guide does not meet the definition of voter education and will be considered illegal politicking.

The IRS received 12 pictures of political signs that were placed on church property. The IRS determined that 9 of the signs violated the prohibition on political activity. A church may avoid problems by either prohibiting all political signs or by charging fee for placing a sign on church property. If the fee approach is adopted, the church must demonstrate that the offer was open to all candidates.

When reviewing church web sites, the IRS found 15 links to web sites that endorsed candidates, resulting in 7 violations of the law. A church may not link to a web site that endorses a candidate, but may link to true voter education web sites.

Five charitable and religious organizations made improper cash contributions to a candidate's political campaign. No funds may flow from charitable and religious organizations to political campaigns.

The IRS received 4 reports that a non-candidate, non-pastor endorsed a candidate during a church service. All 4 instances violated the law.

DEFENSIVE MEASURES

These violations represent a disturbing amount of improper politicking during the 2004 elections, according to the IRS. The IRS plans to step up its enforcement during the 2006 elections. The IRS has posted detailed guidelines for charitable and religious organizations (including examples) about how to comply with the prohibition on political activities. It is found at <http://www.irs.gov/newsroom/article/0,,id=154712,00.html>.

I suggest every church adopt a written political activity policy. A sample can be found at www.wkpz.com. Click on attorneys, and then click on Frank Sommerville. The sample will be found towards the bottom of the page.