



# California Fair Political Practices Commission

January 21, 1988

Carolina C. Capistrano  
Legislative Research Institute  
926 J Street, Suite 806  
Sacramento, CA 95814

Re: Your Request for Advice  
Our File No. A-87-320/  
A-87-283

Dear Ms. Capistrano:

On December 10, 1987, we issued an advice letter to you (No. A-87-283) addressing the question of the application of Section 86300(c) of the Political Reform Act (the "Act").<sup>1/</sup> Subsequently, we received your letter dated December 16, 1987, in which you provided additional information and asked us to reconsider our previous advice. This letter addresses the revised question presented in your letter dated December 16, 1987, and the additional information you provided.

### QUESTION

Does the exemption from the Act's lobbying provisions contained in 86300(c) for a person representing a bona fide church or religious society apply to a church when the church seeks to enact legislation to modify eminent domain proceedings to protect the right to operate church properties in accordance with the doctrines of such church?

### CONCLUSION

The advice provided in our letter dated December 10, 1987, is unchanged. The exemption contained in Section 86300(c) does not apply to a church when the church seeks to enact legislation to modify eminent domain proceedings to protect the right to operate

<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Carolina C. Capistrano  
January 21, 1988  
Page Two

church properties in accordance with the doctrines of such church. Therefore, if the church qualifies as a "lobbyist employer," the church must file the disclosure reports required under Section 86100, et seq.

ANALYSIS

The analysis provided in our letter dated December 10, 1987, applies to the conclusion in this letter. The additional information provided does not support a conclusion that the exemption in Section 86300(c) applies to the church on whose behalf you are seeking advice.

The standard which must be met in order for a church or religious society to come under the exemption is that the action engaged in must be for the purpose of "protecting the public right to practice the doctrines of such church." (Section 86300(c).) We believe the activities the church proposes to engage in, seeking legislation to modify eminent domain proceedings, are not for the purpose of "protecting the public right to practice the doctrines of the church." Therefore, the exemption in Section 86300(c) does not apply to the church in this situation.

If you have any questions concerning this letter, or if you have any questions concerning the lobbying registration or reporting requirements, please call me at (916) 322-5662.

Sincerely,

Diane M. Griffiths  
General Counsel



By Jeanne Pritchard  
Division Chief  
Technical Assistance and  
Analysis Division

LEGISLATIVE RESEARCH  
INSTITUTE

Dec 16 10 35 AM '87

CAROLINA C. CAPISTRANO  
EXECUTIVE DIRECTOR  
WALLI PONTYENEN  
ASSOCIATE DIRECTOR

926 J STREET • SUITE 806 • SACRAMENTO, CA 95814

AREA CODE 916  
TELEPHONE 442-7660

December 16, 1987

Diane M. Griffiths  
General Counsel  
California Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95804-0807

Attn: Jeanne Pritchard, Chief, Technical Assistance  
and Analysis Division

Dear Ms. Griffiths and Ms. Pritchard:

I appreciate your prompt response to my inquiry dated November 4, 1987 regarding the Seventh-day Adventist Church's obligations under the provisions of the Political Reform Act.

I believe your response was the most correct one possible given the question you were dealing with. As you recall, based upon the information I supplied you with, you posed the question as follows:

QUESTION

Does the exemption from the Act's lobbying provisions contained in Section 86300 (c) for a person representing a bona fide church or religious society apply to a church when the church fights eminent domain proceedings or proposes legislation addressing eminent domain proceedings as they apply to church property?

Your understandable conclusion was:

CONCLUSION

The exemption in Section 86300(c) does not apply to the church's activities in fighting the eminent domain proceedings or in proposing legislation addressing eminent domain proceedings as they apply to churches.

My present request is that you kindly consent to a reopening of this matter in light of the additional information enclosed herein.

The materials here referred to consist of the following:

Exhibit 1. A summary statement regarding the church's doctrinal beliefs on christian education by Lorenzo W. Paytee, Vice President for Administration and School Board Chairman, Southern California Conference of Seventh-day Adventists, dated December 14, 1987 with the following attachments:

Exhibit 1a. The 1986-87 working policy of the North American Division of the General Conference of Seventh-day Adventists, pages 119-137.

Exhibit 1b. Sections 920, 930, and 950 of the education code of the Pacific Union Conference of Seventh-day Adventists.

Exhibit 1c. Pages 4-6 of the "Handbook for School Board Members", Pacific Union Conference of Seventh-day Adventists.

Exhibit 2. A copy of materials submitted to Senator Nicholas C. Petris' Office by my office consisting of the following: a statement of the facts involved, the problem, current law, and the proposed legislation.

In light of the additional information provided, I would appreciate a response to the following question:

REVISED QUESTION

Does the exemption from the Political Reform Act's lobbying provisions contained in Government Code Section 86300 (c) for a person representing a bona fide church or religious society apply to a church when the church seeks to enact legislation to modify eminent domain proceedings to protect

Diane M. Griffiths  
Fair Political Practices Commission  
December 16, 1987

Page 3

the right to operate church properties in accordance with the doctrines of such church?

Pending a final resolution of this matter by your office, would not a "stay" on any conformity requirements triggered by to your December 10th opinion be appropriate?

Thank you for your attention to this matter.

Sincerely,



Carolina C. Capistrano  
Executive Director

CCC:ibc  
Enclosures



# California Fair Political Practices Commission

December 21, 1987

Carolina C. Capistrano  
Legislative Research Institute  
926 J Street, Suite 806  
Sacramento, CA 95814

Re: 87-320

Dear Ms. Capistrano:

Your letter requesting advice under the Political Reform Act was received on December 21, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Jeanne Pritchard*  
Jeanne Pritchard  
Chief  
Technical Assistance and Analysis  
Division

JP:plh



# California Fair Political Practices Commission

December 21, 1987

Carolina C. Capistrano  
Legislative Research Institute  
926 J Street, Suite 806  
Sacramento, CA 95814

Re: 87-320

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Very truly yours,

*Jeanne Pritchard* by *JP*

Jeanne Pritchard  
Chief  
Technical Assistance and Analysis  
Division

JP:plh



# California Fair Political Practices Commission

December 22, 1987

Carolina C. Capistrano  
Legislative Research Institute  
926 J Street, Suite 806  
Sacramento, CA 95814

Re: Your Request for Advice  
Our File No. A-87-320

Dear Ms. Capistrano:

We have reviewed your letter requesting reconsideration of the advice we provided you on December 10, 1987, and the materials submitted with your letter.

Although we have not completed a thorough review of your request for reconsideration and the materials you provided, we do not believe that the additional information you have submitted will change the conclusion in our advice letter dated December 10, 1987. Therefore, pending a thorough analysis of the additional information, our interim advice remains as provided in our letter dated December 10, 1987.

We will review the additional information you submitted and will issue an advice letter providing additional analyses.

Sincerely,

Diane M. Griffiths  
General Counsel

A handwritten signature in cursive script that reads "Jeanne Pritchard".

By: Jeanne Pritchard  
Division Chief  
Technical Assistance and  
Analysis Division

LEGISLATIVE RESEARCH  
INSTITUTE

DEC 21 10 35 AM '87

CAROLINA C. CAPISTRANO  
EXECUTIVE DIRECTOR  
WALT PONTYNE  
ASSOCIATE DIRECTOR

926 J STREET • SUITE 806 • SACRAMENTO, CA 95814

AREA CODE 916  
TELEPHONE 442-7660

December 16, 1987

Diane M. Griffiths  
General Counsel  
California Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95804-0807

Attn: Jeanne Pritchard, Chief, Technical Assistance  
and Analysis Division

Dear Ms. Griffiths and Ms. Pritchard:

I appreciate your prompt response to my inquiry dated November 4, 1987 regarding the Seventh-day Adventist Church's obligations under the provisions of the Political Reform Act.

I believe your response was the most correct one possible given the question you were dealing with. As you recall, based upon the information I supplied you with, you posed the question as follows:

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CONCLUSION

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Diane M. Griffiths  
Fair Political Practices Commission  
December 16, 1987

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Pending a final resolution of this matter by your office, would not a "stay" on any conformity requirements triggered by to your December 10th opinion be appropriate?

Thank you for your attention to this matter.

Sincerely,



Carolina C. Capistrano  
Executive Director

CCC:ibc  
Enclosures

EXHIBIT 1: SUMMARY OF CHURCH DOCTRINAL POSITION

1535 East Chevy Chase Drive  
Glendale, California 91206  
P.O. Box 969  
Glendale, California 91209  
(818) 240-6250/(213) 245-1876

Office of the  
Vice President for Administration

## SOUTHERN CALIFORNIA CONFERENCE OF SEVENTH-DAY ADVENTISTS

December 14, 1987

Mrs. Carolina Capistrano  
Legislative Research Institute  
926 J Street, Suite 806  
Sacramento, CA 95814

Dear Mrs. Capistrano:

Historically, the Seventh-day Adventist Church has maintained as one of its cardinal doctrines that, "All thy children should be taught of the Lord and great shall be the peace (well-being) of thy children." Isaiah 54:13. This belief has led to the establishment of a Seventh-day Adventist system of education that extends from kindergarten through graduate school.

Please find enclosed the following material that will detail this fundamental doctrinal position of the Seventh-day Adventist Church:

- 1) The 1986-87 working policy of the North American Division of the General Conference of Seventh-day Adventists, pages 119-137.
- 2) Section 920, 930 and 950 of the education code of the Pacific Union Conference of Seventh-day Adventists.
- 3) Pages 4-6 of the Handbook for School Board Members of the Pacific Union Conference of Seventh-day Adventists.

Kindly note that the statements from the North American Division working policy contain quotations from Ellen G. White, the prophet and one of the founders of the Seventh-day Adventist Church.

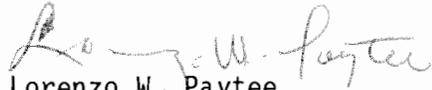
We trust the materials will be helpful as we seek to clarify our position that the philosophy which holds that every Seventh-day Adventist child should be educated in the Seventh-day Adventist system of education is not

Mrs. Carolina Capistrano  
December 14, 1987  
Page Two

only a doctrine of the Seventh-day Adventist Church but  
also the birthright of the children and youth of the  
Seventh-day Adventist Church.

With kindest Christian regards.

Most sincerely yours,

A handwritten signature in cursive script that reads "Lorenzo W. Paytee".

Lorenzo W. Paytee  
Vice President for Administration  
School Board Chairman

LWP:ej

EXHIBIT 1A: WORKING POLICY OF CHURCH, 1986-87

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# WORKING POLICY

NORTH AMERICAN DIVISION

of the General Conference of  
Seventh-day Adventists

1986-1987, Edition

PRINTED IN U.S.A.

REVIEW AND HERALD PUBLISHING ASSOCIATION  
Washington, DC 20039-0555  
Hagerstown, MD 21740

.....

EXHIBIT 1B: CHURCH EDUCATION CODE EXCERPTS

TAKEN FROM SECTIONS 920, 930, 950 OF THE PACIFIC UNION CONFERENCE  
EDUCATIONAL CODE

Philosophy of Seventh-day Adventist Education

920. General Statement of Seventh-day Adventist Educational Philosophy

The Seventh-day Adventist Church recognizes that God, the Creator and Sustainer of the earth and the entire universe, is the source of knowledge and wisdom. In His image God created man perfect. As a result of sin, man lost his original estate. Christian education, by perfecting faith in Christ, restores in man the image of his Maker, nurtures in man an intelligent dedication to the work of God on earth, and develops in man a practical preparation for conscientious service to his fellow men.

Seventh-day Adventists believe that knowledge of this personal God can never be derived by human reason alone, but that God has communicated His nature, purposes, and plans through divine revelation. The Holy Scriptures of the Old and New Testaments were given by inspiration of God and contain a revelation of His will to men, and they constitute for the church the only unerring rule of faith and practice. The church membership accepts the gift of prophecy as manifested through special revelation to the Seventh-day Adventist Church in the life and ministry of Ellen G. White. In this respect Seventh-day Adventists accept divine revelation as the guiding principle in their philosophy of education. They believe their teachers are servants of God and their students, children of God.

The church operates a school system to ensure that its youth may receive a balanced physical, mental, moral, social, and vocational education in harmony with denominational standards and ideals which identify God as the source of all moral value and truth. His revealed mind and will are the criteria for right and wrong. The stated interest of the church is in the optimum development of the whole child for both this life and the life hereafter.

Seventh-day Adventists operate schools, elementary through university, for the purpose of transmitting to their children their own ideals, beliefs, attitudes, values, habits, and customs. The government maintains a highly developed public school system for making citizens; but in addition to being patriotic, law-abiding citizens, Seventh-day Adventists want their children to be loyal, conscientious Christians. There is peculiar to the church a body of knowledge, values, and ideals that must be transmitted to the younger generation in order that the church may continue to exist. In this process the Biblical principle of social transmission is recognized: "Tell ye your children of it, and let your children tell their children, and their children another generation." (Joel 1:3)

A true knowledge of God, fellowship and companionship with Him in study and service, likeness to Him in character development, are to be the source, the means, and the aim of Seventh-day Adventist education.

The Seventh-day Adventist Church desires, through all its educational program, to help prepare the youth for effective citizenship on this earth and for rewarding citizenship in the New Earth.

The educational program of the church gives primary emphasis to character building and to the spiritual foundation of the life of its children and youth. Moreover, it makes abundant provision for the acquisition and interpretation of that which is appropriate from the store of secular knowledge, and skills for mental, social, vocation, and physical development.

920. cont'd

Recognizing that all mankind are children of God, the Seventh-day Adventist schools admit students of any race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. They do not discriminate on the basis of race, color, national and ethnic origin in administration or their educational policies, admissions policies, scholarship and loan policies, and other school-administered programs. [NAD Education Code Section 1020]

930. Objectives of Seventh-day Adventist Education

The Seventh-day Adventist Church desires to provide for all its youth a general education within the framework of the science of salvation. The fundamentals and common branches of knowledge are to be studied so that proficiency is achieved and a high quality of teaching is maintained at each level of the church school system.

The elementary school will assist each child to develop (1) a love and appreciation for the privileges, rights, and responsibilities guaranteed each individual and social group and (2) a wholesome respect and attitude for each unit of society--home, church, school, and government. The elementary school will offer an organized program to ensure adequate development leading toward total spiritual, physical, mental, and emotional health and a basic core of skills and knowledge for everyday living.

The secondary school, predicated on the results obtained through the elementary school with character building as an undergirding structure, will endeavor to operate realistically for each student in the upgrading and maintenance of health, in the command of fundamental learning processes, in the teaching of worthy home membership, vocational skills, civic education, worthy use of leisure, and ethical maturity. The secondary school implementing the church philosophy will seek for objectives of spiritual dedication, self-realization, social adjustment, civic responsibility, and economic efficiency. [NAD Working Policy, F 15-05]

950. Criteria Which Identify the Seventh-day Adventist School as the Church

- a) The mission of the church and the school are identical.
  - (1) The commission given in Matthew 28:18-20 states the basic task of the church as an educational task.
  - (2) The Seventh-day Adventist school system has as its basic evangelistic task the education and redemption of the children and youth of the church. Its object is to promote the development of character and to direct the youth to a "knowledge of God, the Creator, and of Christ, the Redeemer, as they are revealed in the sacred word." [Education, p. 17] In pursuing this task the school system has a greater continuing influence than any other aspect of the church program.
  - (3) The school is concerned about the whole person--body, mind and soul--and seeks to ensure that youth receive a balanced physical, mental, moral, social, and practical education.
  - (4) The school system emphasizes the principle of service to God and man. It prepares youth for a life of service whether as employees of the church or as active, contributing lay members.

- b) The students generally come from Seventh-day Adventist homes and/or are baptized members of the Seventh-day Adventist Church.
  - (1) A basic policy for Seventh-day Adventist schools sets the maximum percentage of non-Seventh-day Adventist students who may be enrolled in the school.
  - (2) In some instances a church may operate a "mission" school which is an evangelistic outreach program to families in the community. A mission school is not limited in the number of non-Seventh-day Adventist students who may be enrolled.
- c) The members of the school boards and Conference Boards of Education are members of the Seventh-day Adventist Church.
  - (1) The school board is composed of members of the Seventh-day Adventist Church who represent a cross section of the school constituency and and who understand and support the church's philosophy of education.
  - (2) The Conference and Union Conference Boards of Education are composed of representatives of various church institutions and/or conferences, lay members of the church and church officials.
- d) Educational employees must be active members of the Seventh-day Adventist Church in good and regular standing, and committed to the teachings/practices and program of the church. Employment qualifications, licenses and credentials, salary and wages, benefits, and retirement are all established and regulated by the policies which cover all other denominational workers.
- e) The curriculum in Seventh-day Adventist schools is uniquely designed.
  - (1) It emphasizes service to God and man as the law of life.
  - (2) It emphasizes a process which encourages, guides and sustains the learner as he/she seeks to understand himself/herself and to relate to the Creator and to his/her fellow human beings.
  - (3) It is based on a distinctive Seventh-day Adventist philosophy.
  - (4) It reflects an awareness of the principles of human growth and development and the worth and dignity of each student.
  - (5) Church educators are involved in continuing curriculum development to ensure that the church's educational objectives are achieved.
- f) The title to school buildings and property is held by the Conference Association which is the legal corporation that holds title to all church and school properties.

EXHIBIT 1C: EXCERPT, CHURCH SCHOOL BOARD MEMBER HANDBOOK

HANDBOOK  
FOR  
SCHOOL BOARD MEMBERS

Pacific Union Conference  
Office of Education  
Westlake Village, California  
December 1986

## PHILOSOPHY AND OBJECTIVES FOR THE SEVENTH-DAY ADVENTIST SCHOOL

A philosophy is a statement or series of statements that identify the beliefs, concepts, values, and attitudes with regard to the education of students. It states what the school or the system believes and how the total program addresses those beliefs, concepts, values and attitudes.

The program of each school should be guided by a distinctively Seventh-day Adventist philosophy and objectives. The school may develop its own philosophy statement or adapt one by adding commitments or philosophic positions that are unique to the school.

The statement of philosophy should be used as the basic reference for decisions regarding the school and its program. Decisions regarding any aspect of the school are to be made with reference to what the school is attempting to accomplish as stated in its statement of philosophy.

Educational philosophy statements that have been adopted are contained in the following publications:

1. Pacific Union Conference Education Code 920, General Statement of Seventh-day Adventist Educational Philosophy, and 930, Objectives of Seventh-day Adventist Education.
2. Pacific Union Conference General Goals for Seventh-day Adventist Secondary Schools included in this document on pages 7-10.
3. The Evaluative Criteria for Seventh-day Adventist Schools K-10, pages 11 and 12.
4. North American Division Working Policy.
5. North American Division Education Code.
6. Pamphlet EDG 2131 - Philosophy and Objectives of Seventh-day Adventist Education, 1984. (Available from the Central Departmental Services).
7. Education Leaflet #30 - Christian Education, Counsel From the Great Books.

The school board should regularly review the school's statement of philosophy to ensure that the philosophic positions, goals, and objectives are implemented throughout the school program. The board should also regularly review the various aspects of the school program to determine that each is supported by the philosophy and goals.

## THE SEVENTH-DAY ADVENTIST SCHOOL AS THE CHURCH

The following criteria identify the Seventh-day Adventist School as the Church:

1. The mission of the church and the school are identical.
  - a. The commission given in Matthew 28:18-20 states the basic task of the church as an educational task.
  - b. The Seventh-day Adventist school system has as its basic evangelistic task the education and redemption of the children and youth of the church. Its object is to promote the development of character and to direct the youth to a "knowledge of God, the Creator, and of Christ, the Redeemer, as they are revealed in the sacred word." [Education, p. 17] In pursuing this task the school system has a greater continuing influence than any other aspect of the church program.
  - c. The school is concerned about the whole person--body, mind and soul--and seeks to ensure that youth receive a balanced physical, mental, moral, social, and practical education.
  - d. The school system emphasizes the principle of service to God and man. It prepares youth for a life of service whether as employees of the church or as active contributing lay members.
2. The students generally come from Seventh-day Adventist homes and/or are baptized members of the Seventh-day Adventist Church.
  - a. A basic policy for Seventh-day Adventist schools sets the maximum percentage of non-Seventh-day Adventist students who may be enrolled in the school.
  - b. In some instances a church may operate a "mission" school which is an evangelistic outreach program to families in the community. A mission school is not limited in the number of non-Seventh-day Adventist students who may be enrolled.
3. The members of the school boards and Conference Boards of Education are members of the Seventh-day Adventist Church.
  - a. The school board is composed of members of the Seventh-day Adventist Church who represent a cross section of the school constituency and who understand and support the church's philosophy of education.
  - b. The Conference and Union Conference Boards of Education are composed of representatives of various church institutions and/or conferences, lay members of the church and church officials.
4. Educational employees must be active members of the Seventh-day Adventist Church in good and regular standing, and committed to the teachings/practices and program of the church. Employment qualifications, licenses and credentials, salary and wages benefits, and retirement are all established and regulated by the policies which cover all other denominational workers.

5. The curriculum in Seventh-day Adventist schools is uniquely designed.
  - a. It emphasizes service to God and man as the law of life.
  - b. It emphasizes a process which encourages, guides and sustains the learner as he/she seeks to understand himself/herself and to relate to the Creator and to his/her fellow human beings.
  - c. It is based on a distinctive Seventh-day Adventist philosophy.
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  - e. Church educators are involved in continuing curriculum development to ensure that the church's educational objectives are achieved.
  
6. The title to school buildings and property is held by the Conference Association which is the legal corporation that holds title to all church and school properties.

(Education Code 950)

# LEGISLATIVE RESEARCH INSTITUTE

CAROLINA C. CAPISTRANO  
EXECUTIVE DIRECTOR  
WALT PONTYENEN  
ASSOCIATE DIRECTOR

926 J STREET • SUITE 806 • SACRAMENTO, CA 95814

AREA CODE 916  
TELEPHONE 442-7660

December 7, 1987

## MEMORANDUM

TO: Senator Nicholas C. Petris  
Felice Tanenbaum, Chief of Staff

FROM: Carolina C. Capistrano

RE: Proposed religious liberty legislation

Here is the bill I promised.

It would stop a pending eminent domain take-over of Seventh-day Adventist church school by the Lynwood Unified School District (M. Waters and Dills' district).

The bill would conform California eminent domain statutes to the requirements of federal constitutional law: under a "strict scrutiny" test, a governmental entity must weigh its "compelling state interest" against the harm done to First Amendment freedom of religion rights and show that it cannot achieve its purposes in a manner less onerous to religion (Sherbert v. Verner (1963) 374 U.S. 398, 83 S.Ct. 1790).

You can expect major support from a wide cross section of religious organizations and constitutional scholars.

We need to communciate with Assemblywoman Maxine Waters and Senator Dills in the most effective way possible at the earliest possible convenience. I think a phone call or early January meeting between the Senator and Maxine would be a good first step. I will follow up with a proposed letter from the Senator to Maxine and Dills.

Since there is a possibility that this may be a fiscal bill, an early introduction would be wise. We need to make a final decision about whether to make it an urgency bill or not. The enclosed draft requests two bills from Legislative Counsel, one with and one without an urgency clause.

I look forward to working with you on this important piece of legislation.

# LEGISLATIVE RESEARCH INSTITUTE

## PROPOSED LEGISLATION: EMINENT DOMAIN & FREE EXERCISE OF RELIGION

Eminent domain take over of a church school  
threatens free exercise of religion.

### I. THE FACTS

The Seventh-day Adventist Church owns and operates Lynwood Academy, a non-profit parochial school (K - 12) in southern California, which is in the process of fighting eminent domain proceedings initiated by the Lynwood Unified School District.

Lynwood Academy has been in existence for the last 53 years, is in a black area and has a predominate minority student body -- 75% Black, 11% Hispanic, 11% Asian, 3% White. Approximately 85% of its students go on to college. Its current secondary enrollment is 196. Its elementary enrollment is 199. Neighbors comment that the property is beautifully maintained, the youngsters well mannered, the school graffiti free, and there are no roving gangs or dope pushers hanging around the school.

The Seventh-day Adventist denomination operates the school in connection with the adjacent church sanctuary as a combined evangelistic outreach and community service ministry in the area (educational/recreational Christian programs for children, large regional church meetings, clothing distribution, Bible book store, etc.).

The school district wants to close Lynwood Academy so that it can build a badly needed high school and elementary school. \$16.9 million, Tideland Oil Revenue funds, were made available for a new public school in October 1986 from the State Allocation Board through the efforts of State Senator Ralph C. Dills and Assemblywoman Maxine Waters who both represent the City of Lynwood. While these legislators were made aware of the church's opposition to the take-over they were not specifically informed about the formidable constitutional problems involved or the school's unusual and impressive demographics.

Unfortunately, the funds are not sufficient to rebuild replacement facilities for the Academy. As a result, the church will not be able to continue this vital aspect of its ministry.

It is feared that if the school must close, Adventists who have created a peaceful community around the school will eventually move, a tremendous loss for a city suffering from the typical urban problems of violence and crime.

The local school district had first selected a site that consisted of a city park and an adjacent tax generating commercial parcel.

Senator Nicholas C. Petris  
Felice Tanenbaum, Chief of Staff  
December 7, 1987  
Page 2

This selection was withdrawn after the City of Lynwood refused to sell the park, citing the need to maintain the park for the community. (City property is exempt from eminent domain action.) However, speculation has it that the city was also influenced by the possible conversion of the adjacent tax generating property to tax exempt status.

Several acres adjacent to the school have also been condemned. Sterik Corporation operated a major supermarket there (Ralph's). The supermarket has now closed down and Sterik has fought its last court battle to retain ownership and/or receive better compensation.

In August of this year, the City of Lynwood voted 3-2 to declare the SDA church property a City Historic Landmark. This is the first step in getting a state declaration in order to save the property from the wrecking ball this summer. However, the church would prefer keeping and operating the school without the inevitable strings-attached problems that would accompany a state historic landmark designation.

Final action has not yet been taken. The church is willing to take the fight to the U.S. Supreme Court if necessary. A legal issues hearing is scheduled for February 16, 1987 with an anticipated trial to follow and finish by the end of April, 1987.

Senator Nicholas C. Petris  
Felice Tanenbaum, Chief of Staff  
December 7, 1987  
Page 3

## II. THE PROBLEM

Existing California eminent domain statutes operate to infringe upon the free exercise of religion in the following two ways:

1. The law does not require consideration of the condemnation's effect on religious operations conducted on the condemned property. The church school is a vital component of the church's total ministry. However, under existing eminent domain legislation in California (in particular, CCP Secs. 1245.230 and 1245.250, resolution of necessity) it is not necessary to consider interference with a church condemnee's free exercise of religion.

However, it is well established that federal constitutional law (First Amendment, Free Exercise of Religion Clause) protects the free exercise of religion against governmental actions where the governmental purpose to be achieved by the action objected to can be accomplished in another fashion with less onerous consequences to religion (SHERBERT V. VERNER (1963) 374 U.S. 308, 83 S.Ct. 1790). While the narrow issue before us has not been litigated before the U.S. Supreme Court (the scope of free exercise rights in a condemnation proceeding), the California eminent domain statutes are seriously defective because they do not conform to Sherbert.

2. Even if the condemnation could be justified, just compensation is not possible utilizing existing statutory valuation methods. Utilizing valuation methods applicable under existing law, the church will only be compensated approximately \$10 million. However, the church estimates that its replacement costs are in the vicinity of \$25 million (involves new construction since another suitable developed site is not available). Unless actual replacement costs are recouped from the local school district, the church will be unable to continue operating an essential element of its total ministry.

## III. CURRENT LAW

### Constitutional Protections of Religious Liberty:

Under California Constitution, Art. 1, Sec. 4 "Free exercise and enjoyment of religion without discrimination or preference are guaranteed." The First Amendment (and its "incorporation" into

Senator Nicholas C. Petris  
Felice Tanenbaum, Chief of Staff  
December 7, 1987  
Page 4

the 14th) also guarantees the "free exercise of religion".

The Sherbert case established that, with regard to the free exercise of religion, government must justify its actions as necessary to achieve a "compelling state interest" (i.e. show that the same interest cannot be achieved by means that do not work the same discrimination). In so doing, great weight must be paid to:

- (a) the weight of the governmental interest,
- (b) the degree of interference of the action with religion, and
- (c) the availability of alternative means to protect the governmental interest without interfering so significantly with religion.

#### The Broad Powers of Eminent Domain:

"Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner..." (Article 1, Sec. 19 of the California Constitution)

A county board of education...may exercise the power of eminent domain to acquire any property necessary or convenient for carrying out the provisions of this article. (Education Code Section 1043)

Education Code Section 1042 (c) gives the board the power to "acquire...hold and convey real property for the purpose of housing the offices and the services of the county superintendent of schools."

#### Conclusive Effect of Resolution of Necessity:

A "resolution of necessity" must first be voted on by the governing body approving the condemnation (CCP Section 1245.240) and such resolution creates a conclusive presumption of public necessity (CCP Section 1245.250).

#### Just Compensation Defined:

CCP Section 1263.310 defines "just compensation" as "fair market value." CCP Section 1263.320 (b) defines fair market value where "there is no relevant market" to be "its value on the date of

Senator Nicholas C. Petris  
Felice Tanenbaum, Chief of Staff  
December 7, 1987  
Page 5

valuation as determined by any method of valuation that is just and equitable." (In the facts before us we must assume there is "no relevant market.")

CCP Section 1263.320 subdivision (b) was added at the request of the Law Revision Commission (Stats. 1975, c. 1275) to deal with the situation where "there may be no relevant market for some types of special purpose properties such as schools, churches, cemeteries, parks, utilities, and similar properties." (Legislative Committee Comment -- Senate 1975 Addition)

However, "all properties, special as well as general, are valued subject to the limits of Article 2 (commencing with Section 810) of Chapter 1 of Division 7 of the Evidence Code. The Evidence Code provides that, regardless of whether there is a relevant market for property, its fair market value may be determined by reference to matters of a type that reasonably may be relied upon by an expert in forming an opinion as to the value of property including where appropriate, but not limited to, (1) the market data (or comparable sales) approach [Evid. Code Secs. 816, 818], (2) the income (or capitalization) method [Evid. Code Sec. 819], and (3) the cost analysis (or reproduction less depreciation) formula [Evid. Code Sec. 820]. (Legislative Committee Comment -- Senate 1975 Addition) (Emphasis added)

While it is clear that the Law Revision Commission believed that the Evidence Code did not offer exclusive methods of property valuation, no further light was shed on which other methods would be appropriate and under what circumstances.

One could argue that a church is not limited to the three valuation methods set forth in the Evidence Code since (1) CCP 1263.320(b) allows "any method of valuation that is just and equitable" for special purpose properties such as schools, etc.; (2) CCP 1263.320(b) was added in 1975, 10 years after the Evidence Code eminent domain valuation methods were added; and (3) the Evidence Code valuation methods are drafted in permissive fashion and do not offer exclusive methods. However, this area of the law is sufficiently vague to require clarification.

In any case, it appears that the method of valuation to be used in the facts before us is the cost analysis method (Evid. Code Sec. 820) which reads as follows: "When relevant to the determination of the value of property, a witness may take into account as a basis for this opinion the value of the property or property interest being valued as indicated by the value of the land together with the cost of replacing or reproducing the existing

Senator Nicholas C. Petris  
Felice Tanenbaum, Chief of Staff  
December 7, 1987  
Page 6

improvements thereon, if the improvements enhance the value of the property or property interest for its highest and best use, less whatever depreciation or obsolescence the improvements have suffered." (Emphasis added)

Senator Nicholas C. Petris  
Felice Tanenbaum, Chief of Staff  
December 7, 1987  
Page 7

#### IV. PROPOSED LEGISLATIVE REMEDY

SB \_\_\_\_\_ (Petris), relating to eminent domain  
and religious property.

An act to add Section 1245.231 to the Code of Civil Procedure  
and to add Section 812.1 to the Evidence Code.

#### Statement of legislative intent

The Legislature hereby finds that the First Amendment to the Constitution of the United States, and Article 1, Section 4 of the California Constitution provide for the free exercise of religion. The special protection afforded to freedom of worship, freedom of conscience, and freedom of thought lie at the very core of the American heritage and American freedoms, and bitter experience in lands which afforded no such protections led to the birth of an American republic committed to freedom of religion.

The Legislature hereby declares that in conformity with existing constitutional law governmental entities shall justify eminent domain proceedings against religious properties as necessary to achieve a compelling state purpose. The Legislature further declares that this enactment establishes appropriate procedures for uniform application at both the state and local levels and that all governmental power to condemn properties operated for religious purposes shall be strictly limited as set forth in this enactment.

#### Establish Constitutional Procedures

Section 1245.231 is added to the Code of Civil Procedure to read as follows:

(a) In the case where the governing body commences an eminent domain proceeding under this article to condemn property owned and operated by a religious entity for a religious purpose or purposes, the resolution of necessity shall set forth findings that justify such a taking as necessary to achieve a compelling

Senator Nicholas C. Petris  
Felice Tanenbaum, Chief of Staff  
December 7, 1987  
Page 8

governmental interest. Such findings shall demonstrate and set forth:

(1) The weight or need of the governmental interest involved.  
(2) The degree of interference of the taking with religion.  
(3) That there is no other means available to the condemning authority to meet its compelling governmental interest which is less burdensome on the free exercise right of the condemnee.

(b) In arriving at the findings in (a) above, the governmental entity shall not take into consideration the tax loss ramifications of condemning tax generating property versus tax exempt religious property.

(c) Just compensation shall be valued according to the terms of Evidence Code Section 812.1.

(d) This section is declarative of existing law with regard to the constitutional burdens a governmental entity assumes whenever, by any action, it interferes with the free exercise of religion.

Remove depreciation as a bar to just compensation  
in cases involving church property

Evidence Code Section 812.1 is added to read:

Pursuant to Code of Civil Procedure Section 1245.231 and notwithstanding any other provision of law, just compensation shall consist of the following whenever the property involved is property owned and operated by a religious entity for a religious purpose or purposes:

(a) Section 820 shall apply where the religious entity which owns the property to be taken under eminent domain proceedings has identified a suitable, comparably valued replacement property that is available for purchase at the time condemnation is expected to be completed and compensation awarded.

(b) Where no such replacement property is available for purchase at the time condemnation is expected to be completed and compensation awarded, the public entity shall provide reimbursement equal to fair replacement value. In determining "fair replacement value" a witness may take into account as a basis for his opinion the value of the property or property interest being

Senator Nicholas C. Petris  
Felice Tanenbaum, Chief of Staff  
December 7, 1987  
Page 9

valued as indicated by the value of the land together with the cost of replacing or reproducing the existing improvements thereon.

COMMENT: As described above, existing law provides for replacement value of condemned property. However, the formula used requires the valuation to be reduced by the amount of depreciation suffered by the property. Thus an honest replacement valuation can never be achieved because the original property will always have suffered wear and tear which will bar the ability to construct new replacement facilities at a different location. The church's only alternative is to purchase a suitable "turn-key" school facility at another site (not possible in the facts before us) or construct new facilities elsewhere. The depreciation factor only has a reasonable application when there is a choice of alternative, comparably valued, used facilities elsewhere for the condemnee to purchase (not usually a likely outcome). The depreciation factor should not be applied when the church's only choice is to construct new facilities.

#### Urgency Clause

In order that the eminent domain proceedings and actions instituted against the Seventh-day Adventist Lynwood Academy by the Lynwood Unified School District and the approval and funding by the State of California of such proceedings and actions conform to the requirements herein set forth, it is necessary that this act take affect immediately.

NOTE: PLEASE PREPARE TWO BILL DRAFTS, ONE WITH AN URGENCY CLAUSE, ONE WITHOUT.

December 22, 1987

MEMO: John McLean

FROM: Jeanne Pritchard

RE: Request for Advice from Carolina Capistrano  
on behalf of Seventh Day Adventists Church  
-- FOR YOUR INFORMATION --

On December 10, 1987, we issued an advice letter to Carolina Capistrano which concluded that the exemption in Section 86300(c) for persons lobbying on behalf of a church to protect the rights of members of the church to practice the tenets of their religion does not apply to a church fighting eminent domain proceedings, and supporting legislation to changes eminent domain proceedings as they apply to churches.

We have received a request for reconsideration, along with a copy of a letter to Senator Petris concerning the legislation being proposed by the church.

We are reviewing the request for reconsideration and the additional information submitted and will issue another advice letter, but we do not expect that the conclusion in our previous advice letter will change.

Ms. Capistrano also requested a "stay" of our previous advice pending review of the additional information. On December 22, I sent her a letter indicating that we are unable to provide a stay because we do not think the additional information will change our conclusion.

Attached for your information is the relevant correspondence.

cc: Chairman Larson  
Greg Baugher  
Lilly Spitz  
Bob Leidigh