



California Fair Political Practices Commission

December 10, 1987

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

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

Dear Ms. Capistrano:

You have requested advice under the lobbying disclosure provisions of the Political Reform Act (the "Act").^{1/}

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?

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 church property.

FACTS

Your firm has been retained by a non-profit parochial school which is owned and operated by a church. The school is in the process of fighting eminent domain proceedings at the local level. The school has hired your firm to explore the possibility of seeking a legislative remedy to prohibit the local government body from proceeding with the eminent domain proceedings. The services to be performed for the church by your firm include proposing an

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

appropriate legislative remedy, seeking expert advice on the proposal from law school professors and others, submitting the final draft to other interested religious groups for their input, and recommending a course of action regarding introduction of the proposal.

ANALYSIS

Section 86300(c) provides an exemption from the requirements to register and file reports and from the other lobbying provisions contained in Sections 86100 through 86205.

Section 86300(c) provides that the Act's lobbying provisions are not applicable to:

A person when representing a bona fide church or religious organization for the purpose of protecting the public right to practice the doctrines of such church.

In In re Morgan (1975) 1 FPPC 177, the application of this exemption is clarified as follows:

This exemption contains several elements. First, the church, which is represented by the lobbyist, must be a "bona fide church or religious society." (See Sherbert v. Verner, 374 U.S. 398 (1963).)

. . . .

Second, the exemption applies only to persons when they represent the Church solely for the purpose of protecting the public right to practice church doctrine. If a person represents the Church in connection with legislative or administrative matters which do not involve the public right to practice church doctrine, he must register as a lobbyist and file reports disclosing his lobbying activities.

It is the phrase, "for the purpose of protecting the public right to practice the doctrines of such church" that requires particular attention in the instant case. This provision limits the exemption in Section 86300 to lobbying activities which protect the right to practice religious doctrine. Thus, if the lobbying activities are to be exempted from the scope of Chapter 6, they must be directed at influencing state action which would have the effect of restricting a person's right to practice the tenets of his religion.

Applying this test, we conclude that a church lobbyist is exempt from the provisions of Chapter 6 when he

opposes legislation which would prohibit practices established in a church doctrine or would compel behavior inconsistent with religious tenets. Moreover, lobbying activities directed at laws which condition a social benefit on actions inconsistent with a person's religious beliefs also fall within the exemption. However, activities designed to influence state action which is merely immoral or unwise in the eyes of the church, and which does not specifically interfere with the members' ability to practice their religious doctrines, do not fall within the exemption provided by Section 86300.

(In re Morgan, Supra at 179.)

The situation you have asked us about involves a local government entity's right to institute eminent domain proceedings against property owned by a church, and the church's proposed activity in developing legislation to change the law concerning such proceedings. The government entity is attempting to obtain property on which a church's school is located. The church is considering proposing legislation which would impose additional requirements on government entities before commencing eminent domain proceedings against the property of a church.

We believe the proposed activities involving the introduction of legislation affecting eminent domain proceedings are in no way for the purpose of "protecting the public right to practice the doctrines of the church."

The Commission further states in the Morgan opinion:

The exemption in Section 86300 is limited to actions protecting a church member's right to practice the tenets of his religion. If a church seeks to influence legislation or administrative action with respect to other issues, it must, like other persons, comply with the provisions of Chapter 6.

(In re Morgan, Supra at 182.)

If the Legislative Research Institute meets the definition of a "lobbying firm" in Section 82038.5, it will be required to register with the Secretary of State and file periodic disclosure reports. In addition, the church on whose behalf the Legislative Research Institute engages in lobbying activity will be required to file disclosure reports as a "lobbyist employer." (Section 82039.5.)

Enclosed for your assistance is a copy of the FPPC "Information Manual on Lobbying Disclosure Provisions of the Political Reform Act." The manual explains the types of activities

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which must be counted for the purpose of determining whether a person or entity qualifies as a lobbying firm or lobbyist employer under the Act and is required to file reports.

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

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeanne Pritchard
Chief, Technical Assistance
and Analysis Division

LEGISLATIVE RESEARCH INSTITUTE

CAROLINA C. CAPISTRANO
EXECUTIVE DIRECTOR
WALT POSTYNEN
ASSOCIATE DIRECTOR

926 J STREET • SUITE 806 • SACRAMENTO, CA 95814

AREA CODE 916
TELEPHONE 442-7660

November 4, 1987

Lilly T. Spitz
Counsel, Legal Division
Fair Political Practices Commission
State of California
P.O. Box 807
Sacramento, California 95808

Dear Lilly:

I really enjoyed "running into you" the other day and "getting caught up." When it occurred to me that I needed a formal FPPC opinion on a certain matter, I immediately thought of you. Lilly, can you or someone in your shop advise us as to what the filing requirements are, if any, with regard to the following scenario?

A church owned and operated non-profit parochial school (K - 12) is in the process of fighting eminent domain proceedings at the local level. Apparently the local public school district, needing to expand its own school facilities and operations, is seeking to condemn the church school property for that purpose. Apparently the local school district decided to condemn the tax exempt school property instead of another available site which was tax generating. The tax generating site had been selected first but was withdrawn when the city within which it was located objected strenuously because of the tax loss ramifications.

The valuation that has been placed upon the property is \$10 million. However, it has been estimated that the replacement costs for the church are in the vicinity of \$35 million. The church school is a vital component of the church's total ministry. The local state action seriously threatens its ability to continue operating that component of its ministry.

These facts raise a number of constitutional issues relating to state interference with religious activities. Enclosed you will find a summary of the major issues as perceived by the church.

The church is seriously considering the advisability of seeking a state legislative remedy. The remedy would probably take the following form:

Lilly T. Spitz
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* A preamble of legislative intent indicating the general purpose of upholding the free exercise of religion, recognizing the awesome power of eminent domain proceedings and the need to define its parameters with regard to properties operated for religious purposes.

* Require state or local public agencies to thoroughly investigate the advisability of selecting another available site instead of property operated for a religious purpose.

* Prohibit any consideration of the tax loss ramifications of selecting non-tax exempt property over tax exempt property.

* Require the public entity to meet a compelling state interest test in selecting the property operated for religious purposes.

* If a compelling state interest does exist for condemning property operated for religious purposes, the public entity shall provide reimbursement equal to fair replacement value.

The church entity involved has retained my firm through the end of this year to propose an appropriate legislative remedy, seek expert advice on the proposal (law school professors, etc.), submit the final draft to other interested religious groups for their input, and recommend a course of action regarding introduction of the proposal.

The contract was initiated late last month, its terms of recompense are \$3,000 through December, 1987. This sum will constitute less than 5% of our gross income for the tax year of 1987.

There is a possibility that a \$1,000 per month retainer will be continued into next year until final legislative action takes place. We expect that total amount to be less than 10% of our gross income for 1988.

What are our filing obligations, if any? What are the church's filing obligations, if any?

As I understand it, the relevant California law is as follows:

California Constitution, Article 1, Section 4 states "Free exercise and enjoyment of religion without discrimination or preference are guaranteed...This liberty of conscience does not excuse acts that are...inconsistent with the peace or safety of the State."

Government Code Section 86300 (c) exempts the following from the

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lobbying filing requirements: "A person when representing a bona fide church or religious society solely for the purpose of protecting the public right to practice the doctrines of such church."

It appears clear to me that the above described scenario falls squarely within the 86300(c) exemption. I would like to know if that is also your conclusion, and if not, the reasons for concluding otherwise. Furthermore, if the above described scenario does not fall within the 96300(c) exemption, does the proportion of our income derived from representing the church in this matter require my firm to register with the FPPC for lobbying purposes?

Please feel free to call if you have any questions. I look forward to hearing from you at your first opportunity.

Sincerely,



Carolina C. Capistrano
Executive Director

CCC:ibc
Enclosure

Copy: Lee Boothby
Boothby, Ziprick & Yingst
Washington, D.C.

Charles Dart, President
Southern California Conference
of Seventh-day Adventists
Glendale, California

Gordon Engen, Associate Director
Public Affairs & Religious Liberty
General Conference of Seventh-day Adventists
Washington, D.C.

John T. Stevens, President
Church State Council
of Seventh-day Adventists
Westlake Village, California

QUESTIONS REGARDING LYNWOOD ACADEMY

1. Whether the taking of the property of a religious institution being used for religious purposes violates the free exercise rights of the religious institution when the compensation paid will be insufficient for the religious institution to re-establish its existing religious activities?

2. Whether the taking of the property of a religious institution being used for religious purposes violates the Establishment Clause of the First Amendment in that its primary effect is to inhibit religion?

3. Whether the circuit court has jurisdiction to review the legislative determination of public necessity made by the school district in light of the constitutional implications raised by the taking?

4. Whether California Code of Civil Procedure §1245.250 which creates a conclusive presumption of public necessity is unconstitutional as applied to the taking of the property of a religious institution being used for religious purposes?

5. Whether the legislative determination of public necessity in this case was void because the school district failed to weigh the public necessity against the free exercise rights of the defendant and to make a determination that no means less restrictive of the free exercise of religion were available?

6. Whether the school district abused its discretion

and acted in bad faith by considering the present tax exempt status of the condemned property as a factor in choosing between competing locations?

7. Whether consideration of the tax exempt status of the condemned property as a factor in choosing between competing locations denies the defendant the equal protection of the laws under the Fourteenth Amendment of the United States Constitution?

8. Whether consideration of the present tax exempt status of the condemned land as a factor in choosing among competing locations violates the requirement of neutrality between religion and non-religion founded in the Religion Clauses of the First Amendment to the U.S. Constitution?

9. When the taking burdens the free exercise rights of the defendant, does the school district, in addition to its normal burden of proving necessity, have the additional burden of proving a compelling state interest and of proving that it has chosen the means least restrictive of First Amendment rights?

10. If the defendant is unable to contest the legislative determination of necessity and is thereby prevented from effectively asserting its constitutional claims, has it been denied due process of law under the Fourteenth Amendment of the United States Constitution?

11. Has the school district improperly condemned land in excess of its needs?

12. Does the First Amendment require that the defendant be entitled to compensation sufficient to re-establish its current religious operations at a new location?

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Re: 87-283

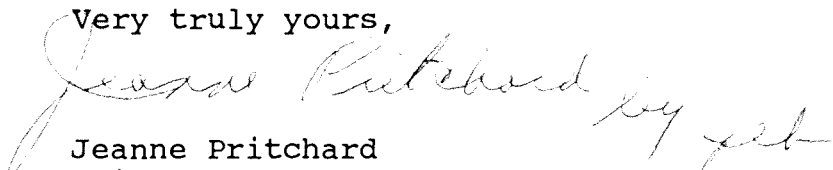
Dear Ms. Capistrano:

Your letter requesting advice under the Political Reform Act was received on November 9, 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
Chief
Technical Assistance and Analysis
Division

JP:plh