

Politics and the Pulpit—Political Activity by Nevada Religious Institutions

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Are you part of a church or religious organization in Nevada? If so, the subject of how far, or even whether the church can become involved in political activity may have crossed your mind. As we head into the Fall 2014 electoral season, Nevada religious institutions need to know what they can, and more importantly, cannot do under state and federal law. The stakes are high, as a violation of the governing rules risks a challenge from the IRS and your tax exempt status.

Many scholars believe that campaign and lobbying laws are an unconstitutional abridgment of freedom of speech, freedom for the free exercise of one's faith, and freedom of association. Others argue the separation of church and state provide no place in religious organizations for political speech.

Both state and federal law give Nevada churches tax exempt status. However, under both systems, churches must curtail political activity to maintain their exempt status. How can a religious institution exercise its freedom of speech? Does there remain room for churches to contribute to the political arena without losing their special status?

Federal Law:

Churches, along with other forms of charity organizations, are exempt from federal taxes under Internal Revenue Code § 501(c)(3). Unique from other exempt organizations, churches are protected from audits unless the IRS can show it has a reasonable belief the church should not have § 501(c)(3) exemption. Churches can, however, lose exemption for improper political activity. Improper activity includes substantial efforts to influence legislation, and any campaign activity.

Substantial Efforts to Influence Legislation:

The IRS can revoke a church's tax exempt status if a **substantial portion** of the church's activity consists of attempts to influence legislation ("lobbying"). In certain circumstances the IRS has considered the following actions as lobbying: (1) contacting members or employees of a legislative body to encourage the body to support or oppose proposed legislation; (2) encouraging members of

the public to contact members or employees of a legislative body for the same purpose; and (3) contacting, or encouraging members of the public to contact, a legislative body to propose new legislation.

However there is no clear cut definition of what constitutes a “substantial” part of a church’s activities. To determine if the activities are substantial, the IRS considers both the amount of employee and volunteer time the church devotes to lobbying, as well as the church’s spending on lobbying. Neither Congress nor the IRS has defined “substantial activity” in this context, but a court overruled the IRS when it revoked exemption from a church whose lobbying efforts were only 5% of its time and effort. “Substantial activity” in another section of the tax code means that an organization’s expenditures constitute 10% of its total revenue. It should be noted, however, that some courts have declined to adopt the 10% rule and scholars have proposed alternative tests such as whether the amount of lobbying is enough that government officials might be improperly motivated to participate in the church’s interests.

Pitfalls A Church Can Encounter With A Candidate For Public Office

The general rule is that tax-exempt churches cannot participate in campaigns for public office. This ban prohibits contributing funds and making written or oral public statements in support or opposition of a candidate. The IRS has applied this ban in revoking tax-exempt status from an organization that funded a political action committee, from an organization that placed a full-page advertisement in a newspaper attacking a candidate’s moral character (even though the church claimed it was trying to warn Christians about the candidate for religious reasons), and from a church that used its publications and broadcasts to attack liberal candidates and incumbents.

Churches can, however, participate in public forums and provide educational voter guides, if they do so in a non-partisan manner and adhere to a complex set of guidelines. Voter Guides published by churches can often run afoul of the rules and can create serious trouble if not constructed properly. Legal counsel should be consulted before any Voter Guide is prepared and distributed.

Additionally, no materials can be produced in coordination with a particular campaign. Individual clergy members acting on their own behalf can participate in elections, endorse candidates, and speak on issues of public policy, but they cannot do so in church publications or at church events. However, creating and maintaining the separation between a clergy’s church authority and personal beliefs is often difficult. Frequently individual clergy cannot separate their private persona from their position within the church. A church itself cannot be involved in any way, including financing the message, using the church’s facilities to promote a specific candidate or issue, using the church’s website to broadcast an individual clergy’s political belief, or use of the church’s membership lists, social media links or other means to promote specific candidates. Again, legal counsel should be consulted for guidance in navigating this terrain.

Nevada Law

Religious organizations Nevada enjoy an exemption from Nevada property taxes, business taxes, and the state’s sales and use taxes. But if a church’s exemption is challenged, the church has the burden to prove its right to the exemption. If there is reasonable doubt as to an exemption, at least one Nevada court has held it “must be construed against the taxpayer.” Thus, churches must take special care not to compromise their Nevada tax exemption status.

One of the ways a church can jeopardize its tax exemption is to allow use of its property and facilities

in connection with a political campaign. Church property and facilities must be primarily used for religious purposes. A church should avoid the sub-lease or donation of a portion of its building or classrooms to be used as a candidate's campaign office or a political party's administrative center.

Nevada also has a state business tax, and a sales and use tax from which churches are exempt. However that exemption is limited and contingent on church activities. If a church is not complying with the statutory restrictions, it can lose its exemption or may not have its exemption renewed. Churches can protect their business tax exemption by simply complying with §501(c)(3) of the federal tax code. Similarly, the sales and use tax exemption is available to churches that do not engage any prohibited political activity. Like the federal tax code, Nevada law prohibits churches from making substantial efforts to influence legislation and from participation in any political campaign.

Best Practices

To avoid losing tax-exempt status under the federal and state taxation systems, churches in Nevada should look to the federal statutes for guidance on their actions, but must also remember that their state tax exemptions are likely more vulnerable. Nevada places the burden on the churches to show they deserve exemption rather than on the government to prove the church does not deserve exemption. Churches should consider contacting legal counsel to discuss how their tax exemptions can be preserved through compliance with the regulations governing political activity by religious organizations.

Some questions to ask your legal counsel are:

- Are there any circumstances when a political campaign can use church facilities and property?
- Are there any regulations regarding the soliciting of campaign contributions or fundraising on church property or through the use of church membership lists?
- Can church clergy, over the pulpit, endorse individual candidates or attack certain candidates?
- Can church clergy, over the pulpit, endorse certain campaign issues, ballot questions, or issue specific referendums?
- Can church clergy, outside of normal worship services make partisan public statements either favoring or opposing a particular candidate?
- Does your church Voter Guide meet the statutory requirements imposed by law?
- How does a church, while providing a platform for ministers or guest speakers, insure that their discussion of ongoing campaigns is either non-partisan, or done in a manner that distinguishes the capacity of individual clergy to express their individual beliefs?
- What other church activities can endanger its tax exempt status?

As a member of the faith community, it's important to know where you stand in the ever-changing legal landscape applicable to religious persons and entities.

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