

Bartel

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

NEBRASKA LEADERSHIP FOUNDATION,)
)
)
Plaintiff,)
)
)
vs.)
)
)
DEPARTMENT OF REVENUE and)
MARY JANE EGR,)
)
)
Defendant.)

CI 02-3158

JUDGMENT

THIS MATTER CAME on for trial on November 25, 2002, on the plaintiff's appeal from the July 23, 2002, decision of the Commissioner of Revenue. Evidence was adduced. The Court was duly advised in the premises. The court finds that the decision of the Commissioner should be reversed and the plaintiff granted the exempt status it seeks.

Appeal Standard of Review

The plaintiff, Nebraska Leadership Foundation, appeals an order by the Commissioner of the Nebraska Department of Revenue denying its application for exempt status from the sales and use tax under NEB. REV. STAT. §77-2704.12 (2000). The appeal is under the Nebraska Administrative Procedure Act, NEB. REV. STAT. §84-901 through §84-920 (Reissue 1999). The review is conducted by this Court, without a jury, de novo on the record of the agency, (NEB. REV. STAT. §84-917(5)(a) (Reissue 1999)) and the court reaches legal conclusions independent from those of the agency.

Dailey v. Nebraska Department of Correctional Services, 6 Neb. App. 919, 578 N.W.2d 869 (1998).

DEPT. OF JUSTICE
JAN 17 2003
STATE OF NEBRASKA

Facts

The facts are not disputed and were largely stipulated. Nebraska Leadership Foundation (Foundation) is a Nebraska non-profit organization. It is exempt from income taxes as an Internal Revenue Code §501(c)(3) organization. The organization's purpose is to "sponsor, organize and manage religious conferences, prayer breakfasts and retreats." The goal of the organization is to "encourage spiritual fellowship among a network of Christian believers across Nebraska, to support activities that foster leadership development based upon the life and teachings of Jesus Christ and to encourage Christian servant leadership." (Exhibit 21, pg. 1) To accomplish this goal, the organization sponsors the following activities:

1. An annual Nebraska Leadership Prayer Breakfast in which Nebraska's Governor, Legislature, Supreme Court and other public officials are invited along with the general public to a breakfast that includes scripture reading, a speaker on a spiritual topic, and remarks by the Governor.
2. The Nebraska Student Leadership Forum on Faith and Values. The annual conference brings together college and high school students, who attend sessions to listen to business and political leaders discuss how their Christian Faith is incorporated in their occupations and leadership. The activities for the students include seminars, small group meetings, a banquet, a work project, worship time and evening recreational time. Work projects are designed to have the students put their faith into action. The talks and discussions center on Jesus Christ, incorporating his faith and values into student's lives.

3. Various retreats and other conferences involving meetings of men and women from around the state. The retreats are held to encourage Christian fellowship, develop relationships, to encourage growth in their faith in Christ and to provide a forum for worship. A theme is developed for each conference, such as "Our Strength in Christ" or "God's Kingdom on Earth".

(Exhibit 21, pgs. 1-3).

The organization does not have a recognized creed or form of worship, a definite or distinct ecclesiastical government, or a formal code of doctrine and discipline. Its membership is not associated with any other religious organization or denomination, it has no ministers or literature of its own, has no established place of worship or regular religious services, or schools for the religious instruction of the young, or for the preparation of ministers.

Religious Purpose Exemption

The issue is whether the Foundation was created exclusively for religious purposes. NEB. REV. STAT. § 77-2704.12 (2002) states in relevant part:

"Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by any organization created *exclusively for religious purposes.*"

(emphasis added.)

The Nebraska Department of Revenue enacted regulations which establish religious purpose criteria "including, but not limited to" whether the organization has

1. a distinct legal existence

2. a recognized creed and form of worship
3. a definite ecclesiastical government
4. a formal code of doctrine and discipline
5. a distinct religious history
6. a membership not associated with any other religious organization or denomination
7. a complete organization of ministers
8. ministers selected after completing prescribed courses of study
9. a literature of its own
10. established places of worship
11. regular congregations
12. regular religious services
13. schools for religious instruction of the young and
14. schools for the preparation of ministers.

Neb. Admin. R. & Rules 316-1-091.05.

The Department initially denied the Foundation's application for exemption because the organization did not meet any of the above criteria, except for having a distinct legal existence. The Commissioner's July 23, 2002, order rejected that reasoning, stating that "to the extent that the Department's initial denial of exempt status to the Foundation (Exhibit #18) was based on the exclusive application of the criterion set forth in REG-1-091.05, it is disapproved." The Commissioner nevertheless denied exempt status.

Under Nebraska law, exemptions from taxation are strictly construed, and their

operation cannot be extended by construction. *Metropolitan Utilities District v. Balka*, 252 Neb. 172, 560 N.W. 2d. 705 (1997). However, exemptions from taxation should also be given a reasonable interpretation in order to ascertain their true intent as to their scope of application. *Doane College v. Saline County*, 173 Neb. 8, 112 N.W.2d. 248 (1961). "A liberal and not a harsh or strained construction is to be given to the terms 'educational,' 'religious' and 'charitable' in order that the true intent of the Constitutional and statutory provisions may be realized. The traditional interpretation should always be reasonable." *Lincoln Women's Club v. City of Lincoln*, 178 Neb. 357, 363, 133 N.W. 2d. 455, 459 (1965). In other words, an organization must clearly be formed for a religious purpose to fit within the exemption, but the definition of "religious purpose" is given a reasonable interpretation to ensure the statute applies within its intended scope. *Doane College v. Saline County*, *supra*.

As early as 1932, the Nebraska Supreme Court rejected a lower court's restrictive definition of "religious purpose" as applied to a property tax exemption. *Ancient and Accepted Scottish Rite v. Board of County Commissioners*, 122 Neb. 586, 241 N.W. 93 (1932). The court stated "neither the profession of a sectarian creed, nor the formal dedication or occupation of property to promote the objects and purposes of a faith thus expressed, is an essential element of a "religious use," nor a necessary prerequisite to and of an "exclusive religious purpose." *Id.* at 595, 96; *Lincoln Woman's Club v. City of Lincoln*, *supra*. @ 363. The term "religious purpose" has been held to have a plain and ordinary meaning. "[P]rayer is always worship. Reading the Bible and singing may be worship...if these exercises of reading

the Bible, joining in prayer and in the singing of hymns were performed in a church, there would be no doubt of their religious character, and that character is not changed by the place of their performance." ***Nebraska Annual Conference of United Methodist Church v. Scotts Bluff County Board of Equalization***, 243 Neb. 412, 418, 499 N.W. 2d. 543, 547 (1993).

In reference to the property tax exemption, the court has also "held that the *exclusive* use means the primary or dominant use of property, as opposed to incidental use. An exemption will not be lost if the property claimed to be exempt is used in an incidental manner that is not educational, religious, charitable, or cemetery use, as long as the property is one or more of the exempt uses." (emphasis added). ***Nebraska Annual Conference of United Methodist Church v. Scotts Bluff County Board of Equalization***, *supra.* @ 416. In ***United Methodist Church***, the court held that because the primary use of a Methodist parsonage was to "promote the objects and purposes of a faith," the incidental uses of the property by the resident reverend did not remove the property from the property tax exemption because it was not solely used for religious purposes. *Id.*

The sales and use tax exemption for organizations formed exclusively for religious purposes was added in 1965. The Legislature used the same phrase, "exclusively for religious purposes," as they had used in the property tax exemption found in NEB. REV. STAT. §77-202. Although the above cases apply to the property tax exemption, it has long been the rule that when the legislature uses words or a term that has received a settled construction by the Supreme Court it is presumed that the

Legislature adopted the same construction in the enactment of subsequent legislation. See *Franzen v. Blakely*, 155 Neb. 621, 52 N.W.2d 833 (1952); *Brasier v. City of Lincoln*, 159 Neb. 12, 65 N.W.2d 213 (1954); *State v. Levell*, 181 Neb. 401, 149 N.W.2d. 46 (1967). Therefore it may be reasonably presumed that the Legislature gave the term the same significance that the term was accorded by the Supreme Court, when it enacted the sales tax exemption statute.

Discussion

The Foundation must establish that its stated purpose is exclusively religious and that its conduct is consistent with its stated purpose. In this case, the term "exclusively" means "primary." *Nebraska Annual Conference of United Methodist Church v. Scotts Bluff County Board of Equalization*, *supra*. @ 418.

The parties stipulated that the purpose of the organization was to "sponsor, organize and manage religious conferences, prayer breakfasts and retreats" and that the goal of the organization is to "encourage spiritual fellowship among a network of Christian believers across Nebraska, to support activities that foster leadership development based upon the life and teachings of Jesus Christ and to encourage Christian servant leadership." (Exhibit 21, pgs. 1-2). This states a religious purpose.

Since the stated purpose is religious, the court examines the conduct of the Foundation. The State argues that the primary purpose of the Foundation is leadership. The State contends that the primary purpose of the Foundation is civic, rather than religious. The state reaches this conclusion because the focus of the Foundation's activities is on leadership and the religious aspects are merely trappings

to leadership. The Foundation, on the other hand, argues that the primary purpose of the Foundation is religious, because its goal is to encourage leaders to model the life and teachings of Jesus Christ.

The officers of the Foundation only seek speakers for the events that have "like beliefs" and the Foundation only espouses one religion, Christianity, purposely focusing only on that religion. All of the Foundation's functions include religious activities which are a primary part of the programs.

The Foundation is ecumenical in its outreach within the Christian faith. A religious organization that is blind to denominational differences cannot meet the criteria of the Regulations. However, where, as here, the denominational blindness is intended to enhance the religious purpose of the organization, the regulatory criteria may not be used to bar qualification for exempt status. An organization is not required to follow a particular denomination or sect to meet the "religious purpose" requirement of statute. *Ancient & Accepted Scottish Rite v. Bd. Of County Cmm'rs, supra.*

The State notes that many of the activities of the Foundation are led by business and political leaders rather than clergy members, and although the keynote speaker may discuss his faith in relation to his position as a leader, that does not make the event "exclusively religious". The evidence is abundant that the design of these activities is to let those in leadership positions know that it is acceptable and possible to lead with their faith rather than hide their faith. The Foundation has apparently made a decision that the better way to reach those in leadership positions is by demonstration and teaching by the leaders' contemporaries and colleagues, rather than through pastors, priests or ministers. Whether this is a good decision is not the issue. The

issue is whether the Foundation's choice is reasonable to carry out its stated religious purpose. The court finds it is.

The content of the forums reveal their purpose. The Christian faith is promoted at the prayer breakfasts. For example, the keynote speaker at the last prayer breakfast was Jim Slattery. He spoke about becoming a Christian, and the impact that had on him personally as well as in his vocation. The past prayer breakfast speaker was Charles Colson, president of Prison Fellowship, and the Foundation searches for speakers throughout the country who have "like beliefs." The fact the prayer breakfasts are led by business and political leaders (rather than clergy) who speak from personal experience about using the life and teachings of Jesus Christ as a model for their leadership, in this case advances the religious purpose rather than offends it.

In addition to the Foundation's organizational inadequacies, the State points to the Foundation's choice to target its message to those in secular leadership positions. The Commissioner concludes that leadership is the primary purpose of the Foundation; rather than a religious purpose. The Foundation has elected to focus on a particular group of people to whom to deliver the message of Jesus Christ; that being those persons in leadership positions. Having chosen this group of people as the recipients of the message, it is reasonable that leadership becomes a necessary element of its activities. A reasonable person would not take a second look at whether a missionary who travels to Nigeria to teach people there how to live their life following the teachings of Jesus Christ was carrying out a religious purpose even though in the process certain life skills are taught. This is simply a different target group for the same message.

It is easy to confuse the means of communicating the message, with the

message itself. Some churches have elected to have rock, heavy-metal, and other forms of contemporary music in an effort to attract young people to hear the Christian message. Whether this court or the Commissioner agrees with this method of worship or questions the propriety of these efforts to communicate the Christian message is not the issue the statute presents. The question is whether these churches continue to have a religious purpose even though they target young people (rather than everyone) and send the message through contemporary music. The question is whether the conduct is reasonably designed to carry out the religious purpose of the organization.

The Foundation appears to be doing little more than targeting its religious message to a specific group of people and then tailoring the presentation of the message into the context of those it hopes hear the message. Such targeting and tailoring does not change its purpose. The Foundation's activities are consistent with its stated purpose.

After considering the totality of the circumstances, it can be said that the Foundation would not exist if not for its focus on, and evangelism of the Christian faith.

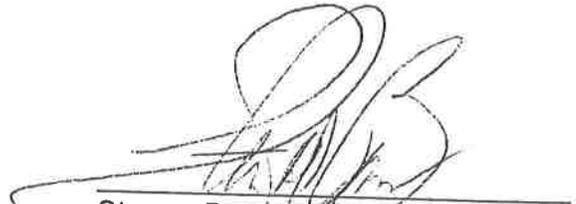
Conclusion

The Nebraska Leadership Foundation is an organization formed exclusively for religious purposes within the meaning of NEB. REV. STAT. § 77-2704.12. The Foundation's efforts appear to carry out these purposes. The court finds no fault with the Foundation's election to direct its message to those in leadership positions. Based on the foregoing, the court does not address the plaintiff's equal protection discussion.

IT IS THEREFORE HEREBY ORDERED AND ADJUDGED the July 23, 2002,

decision of the Commissioner of Revenue is reversed and the matter is remanded with the mandate that the exempt status requested by the Nebraska Leadership Foundation be granted.

Dated: January 15, 2003.



Steven D. Burns
District Judge