

Keeping the Faith

*The Promise of Cooperation,
The Perils of Government Funding:
A Guide for Houses of Worship*

Keeping the Faith, prepared by the Baptist Joint Committee on Public Affairs and The Interfaith Alliance Foundation, offers guidance about whether and how religious social service providers should accept public funds or otherwise cooperate with the government. Because not everything that is legal is right, **Keeping the Faith** discusses both legal and ethical perspectives. This publication seeks to show some of the ways houses of worship and government can cooperate to provide social services. Because many aspects of the law are unclear and evolving, consult an attorney for assistance on specific projects. The guidance offered here should not be construed as legal advice.

**Baptist Joint Committee
on Public Affairs**

The mission of the Baptist Joint Committee is to defend and extend God-given religious liberty for all, bringing a uniquely Baptist witness to the principle that religion must be freely exercised, neither advanced nor inhibited by government.

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The mission of The Interfaith Alliance Foundation shall be: to promote the positive and healing role of religion in public life through education, research, and civil discourse.

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*Baptist Joint Committee on Public Affairs
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Religion-Government Cooperation

Should your religious organization cooperate with or accept money from the government to provide social services in your community? That question increasingly confronts houses of worship and other religious organizations that either provide social services or are considering doing so.

What is “Charitable Choice?”

“Charitable choice” allows the government to fund the social service ministries of houses of worship and other pervasively religious organizations.

“Charitable choice” first became law in the 1996 welfare reform law. “Charitable choice” provisions are found in numerous pieces of federal and state legislation.

“Charitable choice” does not refer to other non-financial cooperation between houses of worship and government or some financial cooperation between government and religiously affiliated organizations, which are not pervasively religious.

Check our Internet sites for the latest legislative information.

Recent governmental actions have increased interest in cooperation between religious institutions and the government. Congress has approved legislation containing “charitable choice” provisions allowing the government to fund the social service ministries of houses of worship and other pervasively religious organizations.

President George W. Bush has opened a White House Office of Faith-Based and Community Initiatives and seeks to expand “charitable choice” to apply to all government-provided services. We believe President Bush’s “charitable choice” proposal is well-intentioned but misguided.

As people of faith, we want to help the needy, and we recognize the unique role the religious community plays in addressing poverty, homelessness and addiction. Religious organizations and denominational institutions, which value the religious freedom that independence from

government regulation provides, will appreciate understanding the ramifications of receiving tax funds.

If our nation is to continue to enjoy robust religious freedom, we must remain cautious about church-state relations. Religion thrives in America because it is funded by voluntary gifts, rather than by compulsory tax funds, and because it remains largely free from governmental regulation. Because tax funding of reli-

gious enterprises implicates both of these principles, financial partnerships between religious institutions and the government must avoid pitfalls to ensure the long-term vitality of religious liberty. If these problem areas are avoided, religious institutions and the government together may battle hopelessness and poverty and do so without sacrificing religious liberty.

Religious social service providers now face a series of significant questions:

- Which religious organizations, if any, should accept tax funds?
- How should a religious institution use tax money?
- What are the consequences of accepting tax funds?
- What non-financial ways are there for religious institutions and the government to cooperate? (See Appendix 1)

This guide seeks to answer these and other questions. It addresses the practical, ethical and constitutional ways to minister in cooperation with government, as well as religious liberty concerns created when government subsidizes religious ministries.

Defining Your Vision

The most successful social service programs are those in which the money follows the vision, rather than the other way around. It is wise to define the vision before seeking funding. This is important because tax funding is not appropriate for all social service enterprises. Those who try to underwrite a fundamentally religious program with tax funds will be disappointed and perhaps sued. By first envisioning the project, one can then determine the appropriate type of funding to seek.

What's Wrong with "Charitable Choice": Implications of Government Funding Religion

- **Advances** religion in ways that violate the U.S. Constitution
- **Creates** unhealthy competition among religions for government grants and contracts
- **Enmeshes** religion in the political appropriations process
- **Transforms** religious ministries into administrative centers of government benefits and services, requiring them to terminate certain benefits, report on individuals and otherwise police the system
- **Undermines** the traditional role of religion as prophetic critic of government; like every other government-subsidized group, religion will be less likely to bite the hand that feeds it
- **Makes** religion dependent on tax money and beholden to government priorities and direction
- **Exposes** religious ministries to invasive government regulation, including compliance reviews, audits, and perhaps even the subordination of religious principles to government policies and objectives
- **Sanctions** government-funded religious discrimination in employment

See Melissa Rogers, "The Wrong Way to Do Right: Charitable Choice and Churches" in *Welfare Reform & Faith-Based Organizations*; Davis, Derek and Barry Hankins editors; J.M. Dawson Institute of Church-State Studies, Baylor University; Waco: 1999.

Establishing Your Enterprise

Religious organizations typically can be grouped into two broad categories:

- **Pervasively religious enterprise**, in which religion runs throughout and the provider cannot or does not wish to separate religious activities from other activities
- **Religiously affiliated enterprise**, which is substantially non-religious and where any religious activities are independent offerings that can easily be separated and voluntarily attended

About the term "faith-based"

The term "faith-based" has become a common way to describe religious institutions. This term has no precise meaning and instead refers to everything from houses of worship to organizations with only some attenuated link to religion. Because we believe there are meaningful distinctions among various religious institutions, we have avoided use of the term "faith-based."

Pervasively Religious Enterprise

The integration of religion into tax-funded activity has the unconstitutional effect of government promoting religion. These funding relationships also invite excessive entanglement between houses of worship and government. The accounting, monitoring and other oversight that follow tax funds to houses of worship create a grave risk for religious liberty. Thus, if the provider cannot or does not wish to separate religious activities from other activities, it should not accept tax funds.

In addition to these constitutional dangers, if a house of worship, rather than a separate religious affiliate, accepts tax funds, it could jeopardize the house of worship's assets through liability judgments. Acceptance of government funds may cause a religious organization to pay more attention to government

rules and regulations than to theological and spiritual concerns. For these reasons, the wisest course is for a house of worship to refrain from seeking tax money for social ministries.

Examples:

Winning Women is a welfare-to-work program at Christ the Redeemer Church. It consists of volunteers who provide a variety of services to help welfare recipients move off welfare and into work. Bible study is an integral component of the program.

Tough Love is a drug rehabilitation program that relies on acceptance of the gospel for rehabilitation. Religious activities and instruction are woven throughout Tough Love's program.

Masjid Al-Nour An-Nur is a mosque that offers a literacy program. It uses the Qu'ran, the Muslim holy scriptures, in its instruction and begins each educational session with a devotion led by an imam, a Muslim cleric.

Some may have heard that “charitable choice” (See Page 2: “What’s Wrong with ‘Charitable Choice?’”) has changed the legal landscape so that churches and other pervasively religious organizations may now accept tax money and be free from governmental interference. Supporters of “charitable choice” claim it will protect beneficiaries’ rights and governmental neutrality as well. But, government officials cannot ensure protection for pervasively religious enterprises from government interference.

Houses of worship and other religious organizations that integrate religion into social service programs should not seek or accept tax funds.

They can create a separate religiously affiliated organization. This allows communities to capitalize on the strengths of churches, such as their unique insight and commitment to their communities, without setting up new pipelines between government treasuries and church coffers.

Religiously Affiliated Enterprise

Religiously affiliated enterprises offer tax-funded, secular services that do not involve proselytizing, discrimination or religious exercises. They may also offer religious activities, provided the religious activities are privately funded, purely voluntary and clearly separate from the tax-funded social services.

Example:

Solutions, a social service body created by a consortium of local churches, offers tax-funded, secular welfare-to-work counseling. Solutions may also offer privately funded Bible studies as long as the Bible studies are separate from the tax-funded counseling and it is made clear to the beneficiaries that these religious activities are privately funded and participation in them is purely voluntary.

Offering this type of program, however, requires care and skill to avoid crossing legal and ethical boundaries. Some may decide not to venture into these waters. To help those who choose to offer this type of program, we have provided the following guidelines and illustrations.¹ This guidance is based on a mix of law and ethics because the law is sometimes unclear and may fall short of the standard ethics require.

It is not enough for a religious provider receiving tax funds to follow *some* of these guidelines – they come as a package deal. If, after reviewing this advice, you feel that you could not comply with this guidance, then we recommend maintaining a privately funded social service program. (See Appendix 2)

¹ This guidance applies to programs assisting adults rather than children. Given their impressionability, special issues will arise in settings involving children.

Guidelines and Illustrations for a Religiously Affiliated Enterprise

1) Ask an attorney and certified public accountant (CPA) to evaluate the compliance requirements and potential liability of any tax-funded arrangement before accepting tax funds.

There may be an attorney and CPA in your house of worship who would be willing to do such work or recommend other professionals.

It is critical that an attorney and CPA professionally evaluate an arrangement before you sign on the dotted line. There may be an attorney and CPA in your house of worship who would be willing to do such work or recommend other professionals. Perhaps a social service network would recommend an attorney skilled in this area.

Ask these professionals to help you answer the following illustrative questions:

- What kind of limits does the state constitution place on tax funds flowing to religious organizations? Are any of those limits applicable in this case?
- What are the terms of the agreement?
- What kind of regulation (local, state and federal) will apply to the program (including regulation not mentioned on the face of the grant, contract or voucher)?
- Who will monitor the implementation of state, local and federal regulations, and how will they do so?

- Who will monitor the relevant government agencies for the development of new regulations (ones created after the contract begins but applicable to the program)?
- What are the reporting requirements (both financial and programmatic) of the agreement?
- How often will there be a government audit, and what will be the scope of that audit?
- What organizational staff is needed to implement the enterprise and comply with government regulations?
- Is there any reliable expectation that the government contract available today will be available two years from now? What kind of fall-back plan exists if the contract is not renewed or if the government program is terminated?

2) Apply for incorporation as a tax-exempt, nonprofit organization, often known as a 501(c)(3). While separate incorporation may not be legally required, it provides crucial legal benefits to the organization.

Separate incorporation provides an institutional separation from, and minimizes liability for, the pervasively religious body. While this process is not difficult, one should retain an attorney's assistance.

3) Segregate tax funds from other funds and use tax funds only for secular activities.

Make sure that you are able to justify the proper use of tax funds by your ministry. Although the

For more information on setting up a separate 501(c)(3), contact:

National Congress for
Community Economic
Development
1030 15th St., N.W.
Suite 325
Washington, D.C. 20005
(202) 289-9020

Not OK

Catholic Social Services uses a portion of tax funds to pay a priest who hears confessions and performs other religious duties.

OK

When, in the course of tax-funded job counseling, a client tells a Catholic Social Services staff member that he would like to make a confession to a priest, the staff member refers the client to a privately-funded priest to hear the confession.

law does not necessarily require a religious organization to segregate its tax funds from other funds, religious organizations greatly reduce their risk of overly intrusive audits and lawsuits by keeping funds separate. Segregation of tax funds will also serve as a constant reminder that tax funds must only be used for secular purposes.

4) Do not discriminate on the basis of religion or religious belief in hiring and firing when the program is tax-funded.

It is legally questionable and ethically wrong to accept taxpayer funds for certain positions and then to fire or refuse to hire certain taxpayers because they are not the “right” religion or do not hold the “right” religious beliefs. One court has already held that

the Salvation Army could not fire a Wiccan because she was paid substantially with tax funds.²

Not OK

Helping Hands, a ministry organized by members of a local church, refuses to hire any staff members who will not sign a statement saying that they believe the Bible to be inerrant. Helping Hands receives tax funds for some of its social work.

OK

Helping Hands, which provides tax-funded social services, hires any person who is qualified for a job, without reference to religion or religious belief.

5) Serve all clients equally, regardless of their religious beliefs. In all tax-funded activities, refrain from asking about clients’ religion or religious beliefs.

Every citizen is entitled to equal access to tax benefits. An organization is legally prohibited from discriminating on the basis of religion in the provision of tax-funded benefits.

6) Ensure that clients know they have the right to seek services from a secular provider.

This is the legal responsibility of the state, but it has ethical dimensions as well. Don't wait until clients object. Let them know from the moment they walk in the door that wholly secular alternatives are available and that you will help them access these alternatives if they so desire.

7) Separate tax-funded services from privately funded religious activities.

It is legally permissible for a religious affiliate to provide secular services that are tax-funded while also offering privately funded religious activities, but the religious activities should be separated from the tax-funded social services. In other words, a client should be permitted to obtain tax-funded services without having to be exposed to or participate in religious activities. Not only should a client be permitted to do so, but also a provider should ensure that it is easy for a client to decline to participate, actively or passively, in religious activities. Providers must respect that

Not OK

Temple Israel provides tax-funded English-as-a-second-language services. The temple puts Jews higher on the waiting list than non-Jews.

OK

Temple Israel places notices in newspapers, community areas & synagogues advertising their tax-funded services. The temple does not use preferences based on religion in creating waiting lists or filling programs.

² Dodge v. Salvation Army, 1989 U.S. Dist. Lexis 4797 (S.D. Miss. 1989).

vulnerable clients are often drawn into religious organizations simply because they are seeking tax-funded assistance. This is quite different from attending religious services because they want to do so.

Not OK

The Welcome Center is a religious organization created by members of First United Methodist Church which offers tax-funded treatment for alcohol and drug abuse. It schedules tax-funded treatment sessions in two parts daily. In between these two segments, a video is played in the same room where the treatment sessions meet. This privately funded video describes taking drugs and alcohol abuse as sins against God and urges the clients to make professions of faith in Jesus Christ. Clients are allowed to leave the room during the video, but are discouraged from doing so.

OK

The Welcome Center provides notice to its clients that a privately funded video regarding Christian beliefs and drug and alcohol abuse will be offered in a separate room after the tax-funded treatment sessions are completed. The Center makes clear that attendance at the lecture is not a precondition to receiving tax-funded benefits and is not necessary to reap full benefit of the tax-funded program.

8) Offer tax-funded services without regard to participation in any religious activities. Do not make participation — active or passive — in religious activities a condition to receiving tax-funded services.

It should always be emphasized that participation in any religious activity is absolutely voluntary to reaping the benefits of the tax-funded program. Care must be taken to ensure that staff follow not only the letter of this rule, but also its spirit. Staff members should not, for example, reflect negative attitudes toward those who decline to participate in religious activities.

NOTE: Some religious organizations choose to administer social service enterprises that are wholly secular in nature although they spring from religious motivation.

The members of local churches form a food bank for their community. They provide this service from a religious motivation but do not engage their clients in any sort of religious activities or instruction.

These programs should follow the applicable guidelines set out for religiously affiliated enterprises.

Not OK

A staff member for Job-Works, a welfare-to-work program of local Catholic churches, tells clients that they will be introduced to various local churches during upcoming Sunday services. The staff member does not tell clients that they have the right to decline to attend the church service and makes attendance appear to be a requirement for participation in the tax-funded program.

OK

The staff member invites clients to a special church service highlighting the Job-Works program. However, she explicitly informs the clients that attendance at this service is strictly voluntary and failure to attend this service will in no way affect the clients' participation in the tax-funded program. The staff member does not let clients' failure to attend the church service affect their participation in the tax-funded program.

APPENDIX 1: Non-financial Cooperation Between Religion and Government

Houses of worship may also choose to cooperate with the government in the provision of social services in non-financial ways. Along with other community leaders, religious leaders may serve on governmental task forces to attack social problems. For example, former Vice President Al Gore's Welfare-to-Work initiative highlighted the work of the Christian Women's Job Corps. In this and other ways, religious organizations and government can share information and the government can highlight the good work religious missions are doing.

Nothing prohibits a religious program from being listed as one of several voluntary choices for those who come to a government office needing social services.

The government and houses of worship may make referrals when appropriate. Nothing prohibits a religious program from being listed as one of several voluntary choices for those who come to a government office needing social services.

Houses of worship may even choose to play a cooperative role with the state in certain volunteer programs. Along with other community groups, religious institutions may participate in government-organized, volunteer mentoring projects as long as the government does not promote religion. Some cities and counties, for example, have contracted with non-governmental social service agencies, which then enlist congregation members and other community members as volunteers in government-financed mentoring programs. In these arrangements, no money flows from the government to the house of worship.

APPENDIX 2: Potential Private Sources of Funding for a House of Worship's Social Ministry

The fact that houses of worship should not accept tax money does not mean, of course, that they should not provide social ministries. Many houses of worship can and do offer privately funded social ministries.

Sources of funding for such ministries are usually tithes, offerings and special mission gifts. If the Congress will pass a charitable deduction for nonitemizing taxpayers, a measure with bipartisan appeal supported by President Bush, then Americans will be spurred to give more to houses of worship and other charitable organizations.

Houses of worship also may want to think more creatively about the kinds of funding they seek. Charitable foundations may have a grant program for which a pervasively religious enterprise could apply. The Ford Foundation (fordfound.org), the Lily Endowment of Indianapolis and Pew Charitable Trusts (pewtrusts.org) are examples of such foundations.

Another creative funding source has been described as "a profound but little-noticed trend" linking social service providers and corporate donors.¹ Some officeholders have encouraged matching funds for corporate employees' gifts to religious non-profits. It is true that the monies that come from these organizations also will come with some strings attached, but these restrictions usually are less onerous than state regulatory ones and do not raise any constitutional issues, thus minimizing the risk of lawsuits. Because these religious ministries are privately funded, they are free to incorporate as much religious content as desired.

¹ Bill Shore, "Charities Change Roles by Turning a Profit," *USA Today*, 26 March 1996, A11 quoted in Joe Loconte, *Seducing the Samaritan: How Government Contracts are Reshaping Social Services*, 104.

A Note from the Executive Directors

Dear Reader,

Thank you for taking the time to read **Keeping the Faith**. We hope this guide flags the perils of government funding and at the same time identifies some ways for religious organizations to cooperate with the government to provide assistance to those in need.

As religious advocacy organizations, we believe houses of worship provide a critical service when they care for people in need, and, further, that religious organizations are uniquely poised to address some of the nation's social crises. We also believe that our nation's greatness stems from its respect for the integrity of all of our faith traditions and the lack of government intervention into our religious practices.

While navigating the intricacies of government funding for religious social programs can be confusing and challenging, it is our hope that **Keeping the Faith** will help religious social service providers meet the needs of their community in a way that protects the integrity of their faith traditions.

Sincerely,



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