

Pastors, Pulpits and Politics

By Mathew D. Staver

Every election year thousands of pastors receive threatening letters claiming their churches will lose their tax-exempt status if they engage in any political activity. Don't believe the hype. Read the truth on what you can and can't do from the pulpit.

Pastors have a solemn duty to address moral and political issues that affect the culture. When millions of unborn children die as a result of our policies and politicians, pastors cannot remain silent. When the sanctity of marriage hangs in the balance, pastors must sound the alarm. The good news is that, as a pastor, you have far more freedom to speak out in the political arena than you might realize. The key to exercising those liberties is knowing them.

Political Candidates

For more than 175 years—from the founding of our country until 1954—churches and other nonprofit organizations were permitted to endorse or oppose candidates for political office. That liberty changed after Lyndon Johnson was elected to the U.S. Senate in 1948. A nonprofit organization (not a church) had opposed his candidacy, and in 1954 Johnson took action. He proposed legislation amending the Internal Revenue Code (IRC) to curb the political activity of nonprofits, including churches. As a result, the Internal Revenue Service (IRS) now prohibits churches and other nonprofit organizations from endorsing or opposing political candidates.

However, only one church since 1954 has lost its IRS tax-exempt "letter ruling"—a document that allows an organization to have tax-exempt status. In 1992, The Church at Pierce Creek in Binghamton, N.Y., took out full-page ads opposing Gov. Bill Clinton, who was running for president. The ads also solicited "tax-deductible donations" to help defray the advertising costs. The church received hundreds of contributions. After Clinton was elected, the IRS notified Pierce Creek that it intended to conduct an inquiry into the church's political activities. When negotiations broke down, the IRS revoked Pierce Creek's letter ruling, and the church filed suit to get it back.

It is important to understand the difference between an IRS tax-exempt letter ruling and the tax-exempt status enjoyed by churches. For an organization to obtain federal tax-exempt status, it must apply to the IRS. If the application is approved, the IRS issues a "letter ruling" granting tax exemption. However, the IRC specifically states that churches are not required to obtain an IRS letter ruling in order to be tax-exempt. Some churches choose for convenience's sake to have the letter ruling; some do not. As long as a church is operating and functioning as a church it is automatically tax-exempt from the moment it is conceived. It does not have to apply to the IRS for this determination.

This distinction is critical to understanding the impact of the IRS's action against Pierce Creek. The IRS had revoked Pierce Creek's letter ruling, and the church filed the lawsuit to receive the letter back. It didn't file suit to restore its tax-exempt status (which the church continued to enjoy). The court noted that "because of the unique treatment churches receive under the IRC, the impact of the revocation [of Pierce Creek's letter ruling]" was likely to be "more symbolic than substantial." The court also pointed out that revocation of the letter ruling did not make the church liable for the payment of taxes. The contributions given to the church to help pay for the ads were never taxed.

In the future, if Pierce Creek wanted to reapply for its letter, it was free to do so. However, even without the letter, it retained—and retains to this day—its tax-exempt status. Other than Pierce Creek, no other church has lost its tax-exempt letter ruling. In fact, no church since 1954 has lost its tax-exempt status for endorsing or opposing political candidates. This history alone should alleviate the unfounded fear of this happening.

If the IRS believes that a nonprofit organization other than a church flagrantly violated the law and corporately endorsed or opposed political candidates, then the agency will first seek to resolve the matter by entering into an agreement with the organization to cease future political intervention. If the organization refuses, the IRS can revoke its tax-exempt letter ruling. If that happens, the organization must reapply for the letter to regain its tax-exempt status.

However, because a church does not have to apply for a letter ruling to have tax-exemption, as long as it ceases its corporate endorsement or opposition of political candidates and continues as a church, then its exemption automatically comes back into being as it was when the church was first conceived.

Laws and Citizen Initiatives

Beyond express endorsement of or opposition to candidates for political offices, pastors and churches may engage in many permissible activities. Churches may host voter-registration drives or forums at which candidates address the congregation or answer questions from a moderator, or be a host site for balloting.

Political candidates visiting a church may be introduced to the congregation and may even preach in the pulpit as long as the pulpit isn't used as a political forum to urge the members to vote for the candidate. Churches may also distribute objective voter guides that address the candidates' views on issues.

Churches may corporately support or oppose local, state and federal laws. They may oppose or support constitutional amendments and citizen initiatives, including petition drives for marriage amendments.

Pastors can preach on biblical, moral and social issues such as homosexuality, poverty and abortion. They can urge their congregations to register and vote, and can acknowledge visiting candidates. Contrary to popular belief, pastors can personally endorse or oppose political candidates out of the pulpit, work for political candidates and contribute money to them. A pastor's name may appear in a published ad or letter signifying the pastor's endorsement of the candidate. For this, the pastor's title and affiliation with the church can be listed with the notation, "Title and affiliation for identification purposes."

If a pastor personally wants to endorse a candidate, he should make it clear that his endorsement is a personal one rather than a corporate endorsement by his church. However, this restriction doesn't apply to appointees to public office. Pastors and churches may expressly oppose or support individuals, for example, being considered as judicial or cabinet appointments.

Lobbying Activity

From the founding of our country until 1934, churches and nonprofit organizations were permitted to engage in an unlimited amount of lobbying activity. Lobbying involves support or opposition to local, state or federal laws or constitutional amendments.

In 1934, the IRC was amended to restrict the amount of lobbying a 501(c)(3) organization may conduct. A nonprofit, tax-exempt 501(c)(3) organization may not devote more than a "substantial part" of its overall activities toward lobbying. Churches are governed by this provision whether or not they have an IRS tax-exempt letter ruling. According to case law, the permissible amount of activity lies somewhere between 5 percent and 15 percent.

For example, let's say a church opens its doors for worship and Bible teaching on Sunday from 9 a.m. to noon, and then again on Wednesday from 7 p.m. to 8:30 p.m. Assume that the church engages in absolutely no other activity and has no volunteer or paid staff. Thus, the sum of its activities is only 4½-1/2 hours per week. That amounts to 270 minutes, and 5 percent of that is 13½-1/2 minutes.

This means a church operating only 4½ hours per week could devote at least 13½ minutes a week to lobbying activities! Every Sunday this church could urge its congregation to contact lawmakers to support

or oppose local, state or national laws. When you consider all the activities a church normally engages in throughout the week, it certainly takes up much more than 4½-1/2 hours!

To determine the amount of activity your church engages in, you will need to calculate the time of all your volunteer and paid staff throughout the entire year. The "substantial part" test is determined by looking at a particular event in conjunction with the church's overall activities. Remember, the 5 percent amount of time is the minimum.

From 1934 to the present, not one church has lost either its IRS tax-exempt letter ruling or its tax-exempt status for engaging in too much lobbying.

Liberal groups are seeking to silence pastors and churches, but I encourage you as a pastor to throw off the muzzle secularists want to impose and pick up God's megaphone. It is time for pastors and churches to become the moral conscience of the community.

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