

GCM 39414

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In re: Whether an organization intervened in political campaigns on behalf of candidates for public office in violation of section 501(c)(3).

Date Numbered: Sept. 25, 1985

February 29, 1984

CC:EE-84-83

Br2:JTRicotta

TO: S. ALLEN WINBORNE
Assistant Commissioner
(Employee Plans and Exempt Organizations)
Attention: Director, Exempt Organizations Technical Division

This responds to your memorandum of September 27, 1983, requesting our concurrence or comment on the proposed revocation of recognition of the exempt status of * * * (hereinafter 'MSA').

ISSUES

(1) Whether the organization intervened in any political campaigns on behalf of any candidates for public office in contravention of section 501(c)(3).

(2) Whether the facts as set forth in the administrative file establish inurement of the net earnings of the organization, in whole or in part, to the benefit of private individuals.

CONCLUSION

We agree that recognition of the tax exempt status of MSA should be revoked, based on the facts established in the administrative record, as a result of the organization's intervention and (FN1) participation in political campaigns on behalf of candidates for public office and inurement of the net earnings of the organization to private individuals.

FACTS

The organization which became MSA was originally incorporated as * * *. It was recognized as tax exempt in * * * under section 501(a) as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954. MSA and its subsidiaries were issued a group exemption letter by the National Office on * * *.

MSA bases its beliefs on the Bible and on the biblical

interpretations of * * *, who is the dominant force in the organization and wields considerable influence with its members. The structure of the organization does not resemble that of a traditional church. It is loosely organized into state organizations, known as * * *, and into local chapters, known as * * *. These subdivisions are under the control of the headquarters located in * * *. MSA has no formal religious services, although followers meet in their local * * * groups. A religious festival, known as the * * *, is held yearly at the * * * headquarters. All followers are strongly encouraged to attend this event.

MSA has extensive holdings of real property and other assets. Its total assets were valued at over * * * as of * * *. Gross income for the fiscal year ending * * * was * * *. (See Transmittal letter--Exempt Organizations, * * *, National Office case file--Book No. 1.) In addition to the headquarters in * * *, MSA also consists of a * * * in * * *; MSA * * * in * * *; and * * * in * * *. It also has affiliates operating in over * * * foreign countries.

An examination of the organization was conducted by the * * * district office during 1978 and 1979. The administrative record documents numerous examples of MSA members, known as * * *, participating in political campaigns in the state of * * * and of * * * members participating in a political campaign in * * *. * * * are MSA members who volunteer for one year to move to a new location and work at enlisting people in MSA. The locations are selected by MSA leadership at the * * * headquarters. The MSA missionaries are expected to hold part-time employment to support themselves. In * * *, 48 of these * * *'s were sent to * * * by * * * to assist * * *, an MSA member and * * * in his activities on behalf of MSA in * * *. Many of these * * *'s were active in the campaign of * * *, the successful candidate for * * * of * * *. * * *'s participated in the reelection campaign of Mr. * * * for the * * * in * * * and in his unsuccessful attempt at a * * * seat from * * * in * * *.

The * * * is a highly disciplined, elite group of MSA members who undergo physical and mental training under the supervision of * * * and other high ranking MSA leaders. The * * * is considered the training ground for new leaders of the organization. * * * members were sent by * * * to * * * to work for the campaign of * * *, an MSA member running for state office in * * *.

The * * * was formed in * * * by high ranking MSA officials or trustees to further the spread of christian ideals in politics and government. The organization applied for, but never received, recognition of exemption as a section 501(c)(4) organization. The name of the organization was later changed to the * * *. * * * was active in this organization as a teacher of the * * * course. This was a course in citizenship and government that was ideologically consistent with MSA's beliefs on politics. MSA videotaped the * * * class and replayed it for followers throughout the country. Participation in the * * * was encouraged in official MSA

publications, and at MSA events such as the * * * festival. As a result, * * * membership was largely made up of MSA followers. * * * and its members participated in the * * * campaigns. The record shows instances in which MSA extended credit to or paid expenses for * * *. Approvals for * * * expenditures often came from senior MSA officials at the * * * headquarters. At the time of audit, it was determined that * * * still owed MSA between * * * and * * *. (See Report of Examination, * * *, * * *, National Office Case File, Book No. 1.)

The administrative record in this case also reveals extensive loans and payments made to individuals who were followers or employees of MSA. Loans were extended to businesses operated by MSA followers. These loans were made pursuant to the policy of the organization to extend funds preferentially to its members on an interest free basis. The record documents 76 of these transactions spanning the years from the early * * * to the time of audit. The loans were made for the personal expenses of the recipients, or in the case of business loans, to further the business interests of the recipients. Promissory notes were not executed by recipients of most of the loans. Repayments were often made, if at all, five or more years after the loan had originally been granted.

ANALYSIS

Section 501(a), in pertinent part, exempts from taxation organizations described in section 501(c). In order to qualify for recognition of exemption under section 501(c)(3), an organization must satisfy the following four criteria: (1) it must be organized and operated exclusively for exempt purposes; (2) no part of the net earnings of the organization may inure to the benefit of private individuals; (3) no part of its activities may constitute intervention or participation in a political campaign on behalf of a candidate for political office; (4) no substantial part of its activities may constitute attempts to influence legislation or to carry on propaganda. Your office has proposed to revoke MSA's exemption due to violations of the second and third of these requirements. We will therefore limit our discussion to the issues of intervention in political campaigns and inurement.

In order to qualify for tax exemption under section 501(c)(3) an organization must not participate or intervene in any political campaign on behalf of any candidate for public office. Treas. Reg. section 1.501(c)(3)-1(c)(3)(i) provides that an 'action' organization, defined in section 1.501(c)(3)-1(c)(3)(iii), is not an organization described in section 501(c)(3). Section 1.501(c)(3)-1(c)(3)(iii) provides that:

an organization is an 'action' organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term 'candidate for public office' means an individual who offers himself, or is proposed by others, as a contestant for an elective public

office, whether such office be national, state, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

Intervention or participation in a political campaign is to be determined from all of the facts and circumstances of a case. Rev. Rul. 78-248, 1978-1 C.B. 154. Revenue Ruling 67-71, 1967-1 C.B. 125, holds that the endorsement of a slate of candidates by a section 501(c)(3) organization is intervention or participation in a political campaign. In *Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972), the exemption of a section 501(c)(3) organization was revoked when it did not formally endorse specific candidates but used its publications and broadcasts to attack some candidates and support others. This activity was considered intervention or participation in political campaigns.

In situations involving membership organizations it is necessary to determine whether an action is attributable to the organization or is merely the act of an individual. Principles of agency law apply to this determination. See * * *, G.C.M. 34631, I-4111 (October 4, 1971). In *Educational Institutions--Political and Legislative Activities*, G.C.M. 34523, I-4103 (June 11, 1971), we discussed the actions attributable to colleges and universities in considering their exempt status.

Only actions by the exempt organization can disqualify it from 501(c)(3) status. Since organizations act through individuals, it is necessary to distinguish those activities of individuals that are done in an official capacity, from those that are not. Only official acts can be attributed to the organization. The school is responsible for their acts in discharging these assigned duties. Their personal activities (those not associated with official duties) are not attributable to the school, and are, therefore, not relevant to an investigation of the school's qualification for 501 (c) (3) status.

Actions by a person in excess of his official authority should not, as a rule, be considered those of the school. If the school allows such usurpation of authority to go unchallenged, however, it impliedly ratifies the act. *Id* at 1.

Political activities of the members of an organization (other than officials) are imputed to the organization when it has either directly or indirectly authorized or ratified the acts. * * *, G.C.M. 33912, I-2782 (August 15, 1968).

Statements of * * * founder and then-President of MSA in *MSA Magazine*, an official publication of the organization, indicate support of * * * and the organization's intent to become involved

in politics in * * *. The following statement appeared in the * * * issue, in a column reserved for * * * to communicate with his followers:.

We must awaken America with the accuracy of God's Word, and the hour is now. I am sending as many * * * as God gives me across the * * * this fall. I am sending seasoned * * *'s--now called * * *--across the * * * to take the light of the truth to those who sit in darkness and in the shadow of death.

'I am sending 48 * * *'s (* * *) to * * * to work with * * * in the political arena. They will remain in * * * through * * *, holding forth the Word, carrying out the work involved in a election, training to be leaders, and they will subsequently be capable of training others as leaders. You have heard it said, * * *. We are going to do our best to see that * * * goes God's way.

We consider this statement to be an endorsement of * * * in his * * * campaign for * * *. The * * *'s were selected by the headquarters and sent to * * *. The record documents the extensive political activities of these MSA members in the state of * * * in * * * and * * *. * * * were involved in the * * * campaign of * * * (Letter of * * * marked * * * to Exempt Organizations Division Technical Advice Memorandum), the * * * campaign of * * * and in * * * party caucuses in * * * County and in the cities of * * * and * * *. (See * * * of Technical Advice Memorandum.) In the * * * campaign the * * * painted and posted political signs, and conducted door-to-door surveys of voters for the campaign. Ms. * * * states in her letter of * * * that the individuals told her they represented the MSA organization. It is instructive on this point to refer to the statements of a former MSA member who participated in the * * * program. (MSA, * * *.) Ms. * * * states that a * * * does not represent himself, rather he represents MSA during his commitment period. (Id. at * * *.) * * * another candidate for * * * who ran against * * * in * * * confirms the fact that MSA members helped * * * in his campaign. (See * * *.) Mr. * * * states in his letter of * * * that MSA members actively supported * * * at the * * * State * * * Convention. (* * *.)

These activities were widely reported in the media in * * *. The actions of MSA members were known to leaders in * * * including * * *, and to the '* * * leader' in * * *. Despite this knowledge no efforts were made to control this activity by members representing the MSA organization. We conclude that this constituted ratification of the actions of the members by the organization.

The activities of MSA and its officials at the * * * Festival are considered to be an indirect endorsement of * * * in his * * * campaign for * * * from * * *. Mr. * * * was permitted exclusive

use of MSA facilities at the * * * to engage in political activities in furtherance of his candidacy. Accommodations were made so that Mr. * * * could bring a camper and * * * officials to set up facilities on headquarters grounds. (See Report of Examination, * * *, National Office Case file--Book No. 1.) Mr. * * * made political speeches during the * * * and solicited funds for his campaign. (Id. at * * *; MSA, * * *; MSA, * * *) Mr. * * * was permitted to conduct these political activities to the exclusion of other candidates. (Report of Examination, supra, * * *.) This activity occurred on MSA property, at the most important MSA function of the year. The * * * festival is carefully planned by MSA officials in * * * during the preceding year. All activities are approved by MSA officials. These activities were authorized and endorsed by MSA, through its officials, at the highest level and are therefore imputed to the organization itself.

In connection with the same campaign, * * * sent out letters to MSA followers encouraging them to attend an allegedly religious meeting at which Mr. * * * appeared and collected substantial sums of money for his campaign. * * *'s letter to followers directed their attention to a * * * to be held at the * * *, * * * in * * * at which an * * * was to be held. According to reports filed with the Federal Election Commission, Mr. * * *'s campaign raised * * * at this * * * on * * *. (MSA, * * * - * * *.) This event was the campaign's second most successful fundraiser, surpassed only by a fundraising dinner at which * * * was raised. (Id.) * * * and other MSA officials were present at this official event. The fact that such substantial amounts of money were raised at this event indicates authorization or ratification of the activity sufficient to impute the activity to the organization itself. We conclude that such activity constitutes indirect participation and/or intervention in political campaigns by MSA.

The * * * campaign of * * * in * * * also demonstrates participation in a political campaign by MSA. Six members of the * * * were sent by * * * in response to a personal request by * * *, in the final five days of the campaign to aid in * * * election effort. (See Report of Examination, supra, * * *; * * *, supra, * * *; MSA, * * *, Ms. * * * was a member of the * * * in * * * of * * * and knew some of the individuals who were sent to * * *. The * * * members engaged in door-to-door canvassing, distributing campaign literature or other duties at * * * direction. * * *, supra.) They were informed of the assignment only one day before they were to leave by the * * * coordinator, * * *. (Id.) Gasoline for the trip and hotel rooms, if needed, were paid by MSA. (Id.)

The * * * is a leadership training program of MSA which is run by the MSA 'under the personal supervision of * * *.' (MSA, * * *.) MSA funds the * * * program entirely, but each member is expected to solicit * * * who will contribute certain amounts each month. These contributions are under the control of MSA. (Id.) The activities of * * * members are strictly controlled and supervised by MSA officials. (Id.)

The actions in this instance were authorized and directed by * * * himself, or very high-ranking MSA officials with the approval of * * *. We therefore conclude that these were acts of the organization and that they constitute participation or intervention in a political campaign by the organization.

In reference to MSA involvement with the * * * we conclude from the record that * * *'s involvement in politics should not be imputed to MSA. While MSA members are active in the * * * and some MSA officials were involved at some point in its history, the record does not indicate clearly that these individuals were acting in any official capacity. The * * *, as a separately incorporated organization, is distinct from MSA.

In * * *, G.C.M. 33912, I-2782 (August 15, 1968), this office considered the conditions under which an exempt organization can be held accountable for the political activities of a separately organized subsidiary. G.C.M. 33912 concluded that the political and legislative activities of the subsidiary can only be imputed to the exempt organization when the subsidiary is merely a guise enabling the parent to carry out the exempt organization's legislative activities. We could not conclude that such a relationship existed between MSA and * * *.

In Definition and Scope of Term 'Social Welfare,' G.C.M. 33682, I-1695 (November 9, 1967), this office specified the proper scope of a de minimis standard in the application of the political campaign participation prohibition of section 501(c)(3) as contrasted with the lobbying prohibition of the same section.

Consistent with the statutory provisions which they respectively implement, Regulations section 1.501(c)(3)-1(b)(3)(i) prohibits an organization from devoting 'more than an insubstantial part of its activities to attempting to influence legislation'.while Regulations section 1.501(c)(3)-1(b)(3)(ii) and Regulations section 1.501(c)(3)-1(c)(3)(iii) are seemingly absolute in their prohibition on political campaigning by 501(c)(3) organizations. A de minimis amount of political activity would, therefore, be something less than an 'insubstantial' amount of political activity or else it would violate the statute and regulations. The de minimis rule in law is specifically intended for those situations where theory points to one result, but only because of the trifling nature of the activity, the theory is to be disregarded. It is an equitable doctrine and to be applied with great discretion.

We speak only in generalities here, and do not attempt to say now what is de minimis or what is 'insubstantial.' This, we think, would have to be decided case by case. (Emphasis added.) (Id. at 2.)

We conclude based on the facts and circumstances of the case that the MSA's political activity is of such an extensive and

continuing nature that it far exceeds the de minimis standard applicable to political activity. We therefore agree with your proposed revocation of tax exemption on the basis of intervention in a political campaign.

The inurement prohibition of section 501(c)(3) states that the net earnings of an organization shall not inure 'in whole or in part' to the benefit of private shareholders of individuals. Treas. Reg. section 1.501(c)(3)-1(c)(2). The statutory language of section 501 makes clear that 'Congress intended to extend the exemption only when the sole beneficiary of the institutional operations was the public at large. The substantial import of this express limitation cannot be ignored.' *Founding Church of Scientology v. United States* (hereinafter *Church of Scientology*), 412 F.2d 1197, 1199 (Ct. Cl. 1969).

The proscription against inurement in section 501(c)(3) is 'unqualified and absolute in the sense that no part of the resources of such organizations may be devoted to private benefit or to other than exclusively charitable uses.' * * *, G.C.M. 35855, A-634777, I-3218 (June 21, 1974); revoked in part on other grounds by * * *, G.C.M. 38238, I-44-784 (Feb. 15, 1980). In G.C.M. 35855 we stated that:

The legislative history of section 501(c)(3) shows clearly that the inurement clause of section 501(c)(3) originated in the charity exemption provisions of the 1909 Act, and that it was added to the language of the exempting provision by Senator Bacon in an effort to assure questioning members of the Senate that the organizations sought to be exempted as charities were not organizations whose income was distributable in any sense to any person for private gain. See 44 Cong. Rec. 4150-4155 (1909). (Id. at 11.)

Inurement of an organization's net earnings may occur in ways other than the actual distribution of dividends or payment of excessive salaries. *Church of Scientology* at 1200. The fact that a relatively small benefit is conveyed does not alter the basic fact of inurement. *Church of Scientology* at 1200; *Spokane Motorcycle Club v. United States*, 222 F. Supp. 151 (E.D. Wash. 1963). By imposing the condition that 'no part' of the net earnings shall inure to the benefit of any individual, Congress 'specifically intended that the amount or extent of benefit should not be the determining factor.' *Church of Scientology* at 1202.

In previous cases dealing with loans by section 501(c)(3) organizations courts have examined various criteria to determine whether inurement had taken place. Grants made on a personal basis in the absence of objective, nondiscriminatory criteria have been held to constitute inurement. *Western Catholic Church v. Commissioner*, 73 T.C. 196, 211 (1979); *Church in Boston v. Commissioner*, 71 T.C. 102 (1978). Loans made without the legal obligation to pay interest or repay principal, or made in such a

manner that the loan is unsecured, lead to a conclusion of inurement. Unitary Mission Church v. Commissioner, 74 T.C. 507, 515 (1980); Church in Boston v. Commissioner, 71 T.C. 102, 106 (1978); Lowry Hospital Association, 66 T.C. 850, 858 (1976). 'Indeed, the very existence of a private source of loan credit from an organization's earnings may itself amount to inurement of benefit.' Church of Scientology at 1202; Unitary Mission Church v. Commissioner, 74 T.C. at 515; John Marshall Law School v. United States, 81-2 U.S.T.C. Para. 9514 (Ct. Cl. 1981). This conclusion is further reinforced 'where the loans are without interest (or even at rates more favorable than market) and without dates for repayment.' John Marshall Law School v. U.S., supra at p. 87,687.

During the years in question, the loans made by MSA were not based on objective, nondiscriminatory criteria. Rather, the loans were made exclusively to followers of the organization. The administrative record reveals that the policy of MSA was to loan money to its members to meet their financial needs rather than have them turn to secular financial institutions. (Post-Conference Submission, Brief on Inurement, * * *, National Office case file-- Book No. 6, * * *.) The organization encourages its members to pursue this method of financing. (Id. * * *.) The 'first and foremost' criterion considered by the Board of Trustees in granting a loan is whether the applicant is an MSA member. (Id. * * *.) Thus, although MSA claims that this is a charitable activity, the result of the criteria used is that 'normally loans are made only to MSA followers.' It is evident from the record that the only charity given was in favor of members of MSA.

As this office has stated in * * *, G.C.M. 38459, EE-68-79 (July 31, 1980):

* * * (t)he capacity in which an individual derives financial benefit, as well as the source of the benefit will determine whether prohibited inurement exists.

INUREMENT IS LIKELY TO ARISE WHERE THE FINANCIAL BENEFIT REPRESENTS A TRANSFER OF THE ORGANIZATION'S FINANCIAL RESOURCES TO AN INDIVIDUAL SOLELY BY VIRTUE OF THE INDIVIDUAL'S RELATIONSHIP WITH THE ORGANIZATION, AND WITHOUT REGARD TO ACCOMPLISHING EXEMPT PURPOSES. Conversely, if financial benefit is derived from an individual's participation in an activity which furthers exempt purposes, the benefit may be characterized as merely incidental to the public purposes served. This financial benefit may be the necessary by-product of an organization's permitted use of specific individuals as the vehicles by which public purposes are served. In this connection, an exempt organization's program may confer direct financial benefits on people who are not themselves the proper recipients of charity if these individuals' subsequent activities are likely to further public purposes.' (Emphasis added.) (Id. at 10.)

In addition to disclosing that an individual's affiliation with MSA was a sufficient factor for the extension of funds, the

record also shows that the loans made were not in furtherance of religious purposes. Instead, the loans were used to further the personal or business interests of recipients. Several examples from the record will serve to illustrate this point. MSA made a loan of * * * to * * * in * * * to purchase a * * * and * * * to be used in its business. (Post Conference Submission, Brief on Inurement, National Office Case File--Book No. 6, * * *.) No interest was charged on this loan, which was repaid over the next five years. The company was run by an MSA member. * * * subsequently built * * * for MSA in * * *. Such an expenditure does not advance the religious goals of the organization but confers direct financial benefit upon the individuals who own * * *. These benefits are impermissible because the recipients of the loans will use the funds to further private commercial interests rather than exempt religious interests. In our opinion, a section 501(c)(3) organization may not loan its funds to private individuals or corporations for use in a business context without violating the statutory prohibition against private inurement. This conclusion is further reinforced when the terms of the loans are favorable to the private party. The nebulous possibility that the recipient may one day aid the exempt organization, for example through a discount for services to the exempt organization, does not permit the section 501(c)(3) organization to extend funds to its members to advance their business interests or to rescue a member's business which is in financial difficulty.

Exhibits * * * provide other examples of loans which were used by MSA followers in their businesses.

Loans were made to employees and followers to purchase homes (Exhibit * * * - * * * Exhibit * * * - * * * Exhibit * * *; Exhibit * * * - * * * Exhibit * * *; Exhibit * * *, purchase autos or trailers (Exhibits * * *, and for personal expenses. (Exhibit * * *--to aid 'financial plight'; Exhibit * * *--wedding expenses, personal debts; Exhibit * * *--for apartment; Exhibit * * *--taxes; Exhibit * * *--personal shopping; Exhibit * * *--Travel, food, medical costs; Exhibit * * *--wedding and medical costs; Exhibit * * *--travel; Exhibit * * *--rent, car payments; Exhibits * * *--travel; Exhibits * * *.) Loans were made to MSA officials and their families. (See Exhibit * * *--loan to * * * MSA General Counsel, to purchase residence in * * *; Exhibit * * *--loan to * * * to send his daughter to college. * * * became an MSA trustee in * * * Exhibits * * *--payments to * * * brother of * * *.)

In situations in which sums were extended to employees or staff members (either paid or unpaid), MSA argues that these sums do not constitute inurement because the organization's employees are paid less than comparable private sector employees. MSA claims that these payments constitute reasonable compensation to its employees. This argument was addressed by the Court of Claims in Church of Scientology, supra:

If in fact a loan or other payment in addition to salary is a disguised distribution or benefit from the net earnings, the

character of the payment is not changed by the fact that the recipient's salary, if increased by the amount of the distribution or benefit, would still have been reasonable. Id. at 1202.

In our opinion, none of the justifications offered by MSA alter the prohibited character of the payments which were made. We therefore agree with your proposed revocation of recognition of tax exemption on inurement grounds.

Jonathan P. Marget
Acting Director
By:
Harry Beker
Assistant Branch Chief
Branch No. 2
Employee Plans and Exempt
Organizations Division

Attachments:

Administrative and

Examination Files (3 boxes)