Charitable Solicitations; Religious Organizations
Religious Organizations; Regulation

LD 1736

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The Honorable Senator Walter W. Hichens
Senate Chamber
State House
Augusta, Maine 04333

Dear Senator Hichens:

This office has reviewed your request, dated June 22, 1977, for an opinion as to the constitutionality of L.D. 1736 as it relates to solicitations by religious organizations. While the constitutions of both Maine and United States prohibit discrimination on the basis of religion and establish that no law shall be made respecting the establishment of religion or prohibiting the free exercise thereof, we believe that L.D. 1736 would be constitutionally valid.

The United States Supreme Court has numerous times indicated that public servants cannot be given the power to deny permits for public activities on the basis of the religious nature of such activities. It is also clear that there can be no censorship of religious views by public officials. However, when a religious organization engages in the solicitation of funds from those outside of its membership it stands in the same position as other benevolent, fraternal, and charitable organizations that are engaged in such solicitations.

Under 9 M.R.S.A. § 5006, as proposed to be adopted by L.D. 1736, organizations which direct solicitations solely at their memberships are exempt. Thus LD 1736 would, except for the exemption statement filing requirement, § 5006-2, only apply to those groups seeking contributions from the public. Such general regulation of public solicitation may apply to religious solicitation to the same extent as it applies to other solicitation activities.

In Cantwell v. Connecticut 310 U.S. 296 (1940), the United States Supreme Court invalidated a Connecticut ordinance which gave to local public officials the authority to determine which organizations qualified for the issuance of permits to engage in religious solicitations. However, in the course of that opinion the Court stated:

> The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise. at 305.

The Supreme Court of California took a similar view in Gospel Army v. Los Angeles 27 C.2d 232 (1945) appeal dismissed 331 U.S. 543. In that case the California Court said the following:

> Religious organizations engage in various activities such as founding colonies, operating libraries, schools, wineries, hospitals, farms, indistrial and other commercial enterprises. Conceivably they may engage in virtually any worldly activity, but it does not follow that they may do so as specifically privileged groups, free of the regulations that others must observe. If they were given such freedom, the direct consequence of their activities would be diminution of the state's power to protect the public health and safety and the general welfare. at 245.

See also City of Manchester v. Leiby, 117 F.2d 661 (1st Cir. 1941); Mickey v. Kansas City, Mo. 43 F. Supp. 739 (W.D. Mo. 1942).

L.D. 1736 provides that charitable organizations receiving over $2,000 per year in contributions shall register and those receiving in excess of $10,000 shall file certain financial information.

The bill in no way discriminates against religious organizations. It in no way requires prior approval or imposes prior restraint, as was the case in Cantwell. It only requires certain registration and disclosure. It addresses religious organizations only in the sense that it makes clear in § 5006(1)(B) that organizations which solicit contributions at a religious service or function would be exempt under the proposed statute.* Moreover, public officials would have no power to censor, restrict, or otherwise limit the activities of religious organizations under L.D. 1736.

I hope this information is helpful.

Very truly yours,

DONALD G. ALEXANDER
Deputy Attorney General

DGA:jg
cc: Representative Trafton

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* In this connection, following the doctrine that where possible statutes should be construed to avoid constitution problems Portland Pipeline Co. v. Environmental Improvement Com., 307 A.2d 1 (Me. 1973), we would construe the term "membership" as applied to religious organizations to include persons attending a religious service or function of such organization.