

TO: United Church of Christ Conference Ministers
FROM: Office of General Counsel
DATE: March 3, 2016
RE: Internal Revenue Code Prohibitions on Political Campaign Interventions

MEMORANDUM

With election year in full swing, the Office of General Counsel offers a reminder that organizations which are tax-exempt under Section 501(c)(3) of the Internal Revenue Code may not engage in activities that are considered to be political campaign interventions. The Internal Revenue Code defines an organization that is tax-exempt under 26 U.S.C. § 501(c)(3) as an organization that, among other things, “does not participate in, or intervene in (including the publishing and distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” United Church of Christ Local Churches, Conferences, and Associations are 501(c)(3) organizations and subject to certain prohibitions on political campaign activities.

A church which violates this prohibition on political campaign activity risks losing its tax-exempt status. A church’s tax-exempt status is a valuable asset and should not be jeopardized by engaging in political campaign interventions.

I. Prohibited Statements and Communications

A church may take positions on public policy issues, and these issues may be issues that are addressed by candidates in an election. But a church must not make statements that favor or oppose any candidate. ***It is important to note that a communication may still be considered to be a political campaign intervention even if it does not identify a specific candidate by name.***

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In a 2007 ruling (Rev. Rul. 2007-41), the Internal Revenue Service (IRS) identified the following factors that will be considered by the IRS in determining whether a communication is a political campaign intervention:

- Whether the statement identifies one or more candidates for a given public office;
- Whether the statement expresses approval or disapproval for one or more candidates' positions and actions
- Whether the statement is delivered close in time to the election;
- Whether the statement makes reference to voting or an election;
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election; and
- Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

The IRS recognizes that the prohibition on political campaign intervention is “not intended to restrict free expression on political matters by leaders of churches or religious organizations speaking for themselves, as individuals.” But pastors and other church leaders “cannot make partisan comments in official organization publications or at official church functions.” *Id.*

Such publications of course include a church’s newsletter and bulletin, but also include a church’s Facebook and other social media pages, a church’s Twitter account, website, or blog, and may arguably include emails sent from an email address that is owned by the church. Pastors and church leaders must recognize that when publishing, posting, or sending content to or from these publications, they are acting on behalf of the church they represent and those actions are actions of the church.

Official church functions are any functions that are held by the church or at the church, including but not limited to worship services, Sunday School and other education classes, congregational meetings, council and committee meetings, or special events. When pastors and church leaders are speaking at these events, they are speaking on behalf of the church and those statements will be attributed to the church itself.

The IRS encourages pastors and other church leaders who speak or write in their individual capacities about political campaigns “to clearly indicate that their comments are personal and not intended to represent the views of the organization” which they serve. *Id.*

Churches and other religious organizations are permitted to conduct non-partisan voter education activities, including publishing voter education guides, encouraging people to participate in the election process, and conducting get-out-the-vote drives. But such activities that favor or oppose one or more candidates is prohibited. For example, a church cannot publish a voter education guide that encourages people to vote only for Democratic candidates.

II. Candidate Appearances

A church may invite candidates to appear and speak at church events and worship services without jeopardizing its tax-exempt status if the appearance does not constitute participating or intervening in a political campaign. A church who wants to invite candidates to speak should adhere to the following guidelines:

- Provide an equal opportunity to participate to political candidates seeking the same office.
- Do not indicate any support for or opposition to the candidate, either in the candidate introductions or in communications concerning the candidate's attendance.
- Do not permit any political fundraising to occur in connection with the appearance.

(Rev. Rul. 2007-41.) Note that an equal opportunity to participate requires that candidates be invited to events that will be similarly attended. *Id.* In other words, inviting one candidate to speak at the annual congregational meeting and the opposing candidate to speak at a worship service the Sunday after Easter may not be considered an equal opportunity.

A church may also hold a public forum for candidates. A church holding a public forum for candidates should adhere to the guidelines above, as well as the following guidelines:

- The questions for the candidates should be prepared and presented by a nonpartisan panel.
- The topics discussed by the candidates should include a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public.
- Each candidate should be given an equal opportunity to present his or her view on each of the issues discussed.
- The candidates should not be asked to agree or disagree with positions, agendas, platforms, or statements of the church.
- The moderator should not comment on the questions or otherwise imply approval or disapproval of the candidates.

Id. A church holding a public forum that favors or opposes a candidate risks violating the prohibition on political campaign intervention.

III. Campaign-Related Business Activity

Some churches have been approached and asked to lease office space to candidates, to accept political advertisements in church publications, or to sell their member or mailing lists. A church should proceed with caution in engaging in these types of activities, as they could be construed as political campaign interventions. A church should consider the following guidelines in determining whether to engage in these activities:

- The service, facility, or goods should be available to all candidates in the same election on an equal basis.
- The service, facility, or goods should be available to the general public, and not just to candidates.
- The fees charged to candidates should be the church's customary and usual rates.

- The service, facility, or goods should be an ongoing activity offered by the organization and not just conducted for a particular candidate.

(Rev. Rul. 2007-41.) Churches, pastors, and other religious leaders who have questions about whether certain activities violate the Internal Revenue Code should contact their Conference Minister.