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PENDING LEGISLATION AFFECTING CHURCH ORGANIZATIONS

- (a) Legislative Activity
- (b) Availability of Declaratory Judgment Actions

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J. P. Darrouzet, as I was coming back from a coffee break, asked me if I knew any jokes, or if I had any good jokes, and I'm almost tempted to say the whole subject matter is a joke. But specifically, the program mentions two areas of legislative concern that are rather current insofar as the U.S. Catholic Conference is concerned. I would like to reverse the order and dispose of one of them very briefly, and then add a second area of concern that isn't mentioned.

First is the area of declaratory judgments. Mr. Lurie referred to that this morning, and the situation simply is that the House has approved and, since we set up the program here, the Senate Finance Committee has given its tentative approval to the institution of declaratory judgment procedure for 501(c)(3) organizations that lose their exempt status. Basically, what it amounts to is that during the process of adjudication after the Internal Revenue Service has revoked or threatened to revoke somebody's exemption, if you give notice of your intent to carry the court case into the tax court, or perhaps the district court, during the process a contribution would continue to be deductible until there is a final determination. There's a technical amendment that we have requested and I think will be accepted in the Senate Committee for clarification. It states that a notice of revocation of advance assurances of deductibility of contribution would trigger the declaratory judgment remedy for the organization involved, and prevent the Internal Revenue Service from having a chilling effect on prospective donors by revoking advance assurance prior to taking final action on exempt status. If there are any questions in this area, I'll try to find time to deal with them at the end here.

With that, I'll try to get into a couple more substantive areas of current consideration by Congress. Both have to deal with so-called legislative activities of exempt organizations. The first area of particular concern is what is known as the Conable bill in the House of Representatives which has just acquired a new number. This is the third or fourth version of this legislation, H.R. 13500. In the Senate it's known generally as the Muskie Bill. The latest version has not been introduced, I don't believe, unless it was introduced today in the Senate, so I can't give you a number on it. The basic thing about this legislation is that it's been around for several years and seems to be making some progress. There'll be a hearing in the House Ways and Means Committee on it on Wednesday, a one day hearing, and there seems to be substantial support for the bill as it is finally developed. Basically, it is an attempt, brought about largely because of a few revocations of exemptions — in the *Sierra Club* case and then later in the *Bob Jones* and *Hargis* cases, *POAU* cases — to clarify the present restrictions on influencing legislation on the

part of an exempt organization. As you all will recall, the law merely states no substantial part of the activities of an exempt organization can be devoted to influencing legislation or otherwise carrying on propaganda. The Treasury has never done a very good job of trying to define what is "substantial" and the courts have not been much better. The result was that many organizations who engage in a small amount, and sometimes in a little more than a small amount, of direct and indirect lobbying activities, both direct buttonholing on the Hill and grass roots activities, are unable to get a clear opinion out of their attorneys or any clear advice out of the Internal Revenue Service as to whether they are endangering their exempt status by that level of activity. And many of them have decided it would be best if they could get some certainty and have come up with this proposal, which basically would do two things: it would attempt to get rid of some of the vagueness in the statute as to what is influencing legislation and then would attempt to say, not directly, what is substantial, but in an indirect way to say that for certain organizations a level of activity based on a percentage of their total expenditures would be grounds for penalty or revocation eventually of their exempt status. Because of the great variety of organizations in the exempt field, the legislation is written on an elective basis. This means that it would apply these new standards to an exempt organization which elects to come under these new standards.

In the case of the Church, and religious organizations generally, we really found this somewhat difficult because the test involved basically is an accounting-bookkeeping test which requires allocation and extensive reporting before Treasury could ever administer and then would require extensive accounting and an allocation of certain portions of your exempt activity which would be counted as influencing legislation. The legislation gives a lengthy description of the types of activity which would be considered influencing legislation, if you elected to come under it.

We objected at hearings to this approach on the grounds that even if an organization did not elect to come under it, the Treasury would most likely attempt to use the same standards in applying the present law, so that you would have a bleedthrough effect that would operate against organizations that do not elect, and in our case we felt that the Church would not wish to, or church organizations, generally, because the act of election would bring about a very high level of governmental scrutiny and attempt to decide what's religious and what's influencing legislation. We have problems with the idea of IRS monitoring a sermon in a church on Sunday to determine whether the pastor was trying to influence legislation, and we decided against any type of elective procedure.

Mainly as a result of that objection by the churches and because in the last couple of years we've been joined by the National Council of Churches, the Baptist Joint Committee on Public Affairs and the Lutheran Council of America, as well as the National Association of Evangelicals, the bill has been stalled. We have taken the position, along with other churches, that we seek no change in the present law. We don't want to prevent other charities that feel this would be helpful in improving their position, but if there is going to be a change, the only one we would really support would be removal in the case of churches of any restriction on legislative activities. As a result of some negotiations with sponsors and the Joint Committee Staff, the new Conable bill was introduced on May 3, with certain provisions applicable just to churches. This is somewhat akin to the problem this morning. I was reminded when Mr. Lurie was talking, that a couple of years ago I

spoke to this group. At that time the Pension Reform Act was under consideration and was about to be passed, and the main thing I was talking about was our efforts to get an exemption for church plans. To a certain extent, what we have been doing in this case is somewhat the reverse of that. We have been trying to get an exclusion, rather than an exemption, so that religious organizations would not be allowed to elect to come under these new lobbying rules in order to also maintain a position that the new lobbying rules are not to be applied to churches. After listening to Mr. Lurie this morning, I decided that maybe this was the best thing we ever did. I recall Mr. Reed, Dick Kelley and I were struggling with this pension bill along with Congress a few years ago, and they finally decided that there wasn't any way to cure our problems except through an exemption, and take church plans clear out from under it. And that's what we did and I'm kind of happy that that's what happened because churches, in that case, will not get hurt unless they elect to come under the new pension law.

In the case of the new Conable bill and the lobbying rules that are proposed a church would fall into the category of a disqualified organization, and it would relate to churches, conventions, associations of churches, integrated auxiliaries and members of an affiliated group of organizations, if one or more members of such group is a church of an integrated auxiliary. And the statute would carry with it, with respect to any organization which is disqualified, in other words, a church or integrated auxiliary, that nothing in this new bill shall be construed to affect the interpretation of the phrase "no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation." The attempt here is to tell the Treasury Department that Congress is disqualifying religious organizations from coming under the dollar percentage test and these various regulations which would be associated with it, and that by disqualifying them from such an election the intent is that Treasury will continue to apply current standards, or lack thereof, in the case of judging whether a church is engaged in substantial legislative activities.

Further, there is a provision proposed in the new Act which would say that a 501(c)(3) organization which has its exemption lifted because of substantial legislative activity would not be allowed to fall into a (c)(4) category of tax exempt social welfare organization and in this case an exception is made in the case of churches. If they are disqualified from election, they would be allowed to fall into a (c)(4) category, again part of an attempt to hold churches harmless from the inference that the Congress was intending to apply these standards to religious organizations.

That fairly well covers the important sections of the bill, the most important ones, as applying to churches. Just quickly, in terms of exempt organizations, not churches or integrated auxiliaries, or thereby affiliated, the new standard proposed for electing organizations would be that you could spend up to 20% of the first \$500,000 of your budget for influencing legislation if you elect to come under this bill and still not lose your exemption. Between \$500,000 and a million, you are dropped down to 15% of the excess over \$500,000. It decreases up to 10% between one million and a million and a half dollar budget, and then 5% of the excess over one and a half million dollar budget, but not in any event to exceed one million dollars. I will not attempt to go into their idea of what influencing legislation is, except to say that they are including attempts to influence the general public. And in the case of membership organizations, certain types of communication to your

own membership to influence them would be considered influencing legislation, both of which have been areas of dispute for some years, under the current 501(c) (3) provision.

By both direct lobbying and their phrase of attempting to influence the opinion of the general public would be included and this we found very difficult to apply in the case of churches, particularly national church bodies where you use such modern means of communication as radio and television. It's pretty hard for a church that's carrying on its mission, a national church, to influence its own members without influencing the general public in the process.

The second area of activity and one that will have, if it goes through Congress, and I suspect that if not this Congress, then the next two or three Congresses, something will be coming in this area, is in the lobbying registration statute. A bill has been reported by the Senate Finance Committee. It's patterned after a number of such bills adopted in state legislatures in recent years to put a little teeth into the lobbying disclosure act, the registration act. In this case, there is no exemption for churches contemplated in the Senate bill, and I don't think that it is at all practical to expect any such exemptions for churches or religious organizations. The bill is a tremendous change from the current federal law. The present law, if you're familiar in this area, as a result of the *Harris* case by the Supreme Court, was described by, I think, it was President Johnson, once as being more loophole than law. This is an attempt to really close all of the loopholes opened up by the Supreme Court and to require registration and define who is a lobbyist in a practical manner.

Basically, the bill would define a lobbyist as not being an individual, but an organization. And to be defined as a lobbyist means you have to register and file quarterly reports on your activities and to maintain certain records. The threshold test of who is to register is probably the most important for any organization other than one like ourselves, who clearly would be under almost any standard, engaged in lobbying activities. So an exempt organization, a church, or any business corporation would be judged by three basic standards: if they hired anyone, such as an attorney, as a legislative agent to influence legislation and paid that individual \$250 or more per calendar quarter for the purpose of making lobbying communications on their behalf, the organization would have to register as a lobbyist. The attorney or the legislative agent would not have to register, but the organization of his client would have to register. Second definition is: an organization, such as typically the United States Catholic Conference, which makes twelve or more oral lobbying communications per calendar quarter through its paid officers, directors, or employees, and this is defined as communications to anyone other than your own home state senator or your own local Congressman wherever you have your principal place of business. The third standard to determine if you have to register is whether you expend in direct expenditures for a calendar quarter \$7,500 or more for lobbying solicitation; in other words, in grass roots activity of asking other people to contact Congress and influence legislation. There are certain exceptions, such as an individual who is not employed by an organization who just wants to come to Washington and go around and lobby for better gun control on his own or against better gun control, would not in any event have to register.

The professional volunteers are creating a little problem in this legislation and the Chamber of Commerce has got quite a campaign on to convince Congress that

Ralph Nader ought to register as well as the business lobbyists, even though his organization doesn't pay him any salary. The Chamber calls it a professional volunteer and apparently as the bill is written there is some question whether they can catch Mr. Nader in this net. I expect that'll probably be a subject for some action on the floor of the Senate late this month or early next month when the bill is scheduled to come up.

What happens if you have to register is that basically you have to report, and having determined that you have to register because you hired somebody and gave him \$250 in a quarter, or you made 12 oral lobbying communications to Congress, a staff member of the Congress or executive agency regarding a legislative matter, is that at that point you have to report every quarter, you have to list all the things you lobbied on, or your agent lobbied on on your behalf, the issues, a general description of your position and your general description of your activities. You have to report how much money you spent in this activity. In the case of an organization that doesn't hire a legislative agent, they have to report on behalf of all of their employees, their paid officers and directors, and one of the difficult parts of it is they also have to report in terms of lobbying solicitations. The Act defines lobbying solicitation rather in some detail, basically it is a communication in which you ask someone else and you have to report it if you have to register, even though you're not reaching a large number of people or are not spending \$7,500 for soliciting purposes.

But I could solicit somebody here in the room and then you in turn solicit someone else. Unless this is all part of a general pattern, I wouldn't have to report who you were soliciting, but I would have to report that I solicited all the diocesan attorneys, which I am about to do, to influence some legislation.

Basically that is the situation. I expect it will go through the Senate this year, and it is not at all clear whether the House of Representatives is going to do anything with it. But I would say that if they do not do anything with it this year, it will be back in the new Congress and the starting point will be basically this bill, which we generally describe as one of these Common Cause type of lobbying bills.

Now, to do a little lobbying solicitation, just last week we had a situation arise about which I will tell you our fears, and promise to be in touch with you when we get more definite answers. The Congress is considering extension of the Revenue Sharing Act. The Revenue Sharing Act was enacted about four years ago. In effect, this applied to the funds used in revenue sharing that state and local governments received, the nondiscrimination provisions of Title VI of the Civil Rights Act, in other words, nobody can use those funds, directly or indirectly, the state cannot use those funds in a program or activity which discriminates on the basis of race, color, sex or national origin.

Last week the House Committee reported out on Thursday the extension of this, the House Government Operations Committee, with a rather significant change in the nondiscrimination provision. What it says is this. It's not very long and I'll read it to you.

"No person shall on account of age (which is a new term in terms of Title VI) race, color, religion, sex, national origin or handicap status, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a state government or unit of local government, which governmental unit receives funds made available under this Act."

Now, this does two things as best our legal staff has been able to parse it out. It extends the no discrimination clause in Revenue Sharing to the state and local funds of a state or local government that receives federal funds. It does not limit that no discrimination clause to the use of the revenue sharing funds, to the funds themselves. So that, basically, a state or local government that is receiving revenue sharing funds, and of course that's everybody under the formula, either state or general units of government who receive the revenue sharing funds. If they receive those funds, then they cannot use their own locally raised tax funds that are acquired in any way, in a program or activity which involves discrimination on the basis of age, race, color, religion or sex, and national origin.

It is followed by a rather odd statement that this provision shall be interpreted in accordance with Titles II, III, IV, VI, and VII of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Title IX of the Education Amendments of 1972 with respect to discrimination on the grounds of race, color, religion, sex or national origin. It is here we have great difficulty and we hope to get it clarified in the next couple of days, but the problem arises that Title VI doesn't mention religion. And Title VII, the employment section, under the Civil Rights Act, has exceptions in the area of discrimination based on religion. For instance, it allows a church to discriminate in employment of its own ministers, its own employees for a religious purpose. It allows a college, for instance, through a specific exception known as the Purcell Amendment, to a private college to discriminate in the employment of faculty based on religion. Those are specific exceptions. So it is very difficult to figure out how you can interpret a provision that goes far beyond the Civil Rights Act of 1964 in the area of religious discrimination.

In accordance with that Act, and the general conclusion on a tentative basis that we've reached is that this would be really a new super Civil Rights Act, in effect, applying to all state and local governments, and programs funded by them. For a church institution the problem could arise, for example, in a state like New York, where there is the Textbook Loan Law, and students attending nonpublic schools which are church-related receive textbook loans funded out of state or local funds, or bus transportation, or school lunch or health and welfare benefits. If that school discriminates on the basis of religion, either in the employment of faculty, or in the admittance of students, there might be a very serious question as to whether that state could continue to receive any revenue sharing funds. Our fear is that the result would be that no state or local government would run the risk of losing these revenue sharing funds in order to maintain a potentially disqualifying program.

I'm going to solicit a little lobbying activity. It is going to be rather difficult for us to defeat this addition of religion to the civil rights procedures of the government, and we're going to need considerable activity, I think, before this issue is resolved. Most likely, it will not reach the floor of the House for a couple of weeks. By then we will know where we stand, we'll have the benefit of the Committee Report which will be filed tomorrow, and if we are at all able to do so, we will try to strike the word "religion" from this proposed change, and if we fail to do so, we will have to call on a tremendous amount of help to reverse it in the Senate. This bill is out of the House Committee. The Government Operations Committee's chairman is Jack Brooks of Texas, sponsor of this particular amendment was Bar-

bara Jordan, also of Texas. In the Senate, the jurisdiction over this is the Senate Finance Committee. I think, there are 17 members. Russell Long is the chairman; ranking minority member is Senator Curtis of Nebraska.

Thank you.