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REVENUE RULING 78-248

THOMAS A. HORKAN

When Al said at the beginning of his talk that he was not an expert in tax law, I kind of panicked. I figured this panel was going to be a bomb, but it has not developed that way.

I would like to share with you a few pragmatic concerns in the application of what Al has been talking about. Many of you have had more involvement in problems under this ruling than I have. The ruling came out right at the beginning, or, in some places, even during political campaigns. The Church at that time was involved in all kinds of advocacy programs, not only in abortion, but in the tuition tax credit program, the Panama Canal Treaty, welfare reform, food stamp reform, and various local issues. In some states it was involved in balanced budget concerns and, in Florida at least, casino gambling. The ruling really created problems in a number of different ways.

Shortly after both rulings came out, George Reed sent out opinions on them to the dioceses. After the second ruling, his opinion was delivered to the dioceses. Al Scanlan's opinion was delivered by the National Committee to the bishops and, while they were more or less similar, George's was more cautious than Al's. But both of them basically concluded that the Catholic press was excluded from the ruling, that the ruling was not directed toward newspapers in any way, and they gave a number of reasons for that conclusion. At the same time, however, the Catholic Press Association employed counsel who reached a different conclusion. He said in his letter that when he first started working on the matter, he called, in his terminology, a "technician" at Internal Revenue Service who told him absolutely that the Catholic press of the religious press is covered by the ruling, and therefore he advised Catholic newspapers to avoid involvement in polls, endorsements, advertisements, or any matters involved in election campaigns.

The Exempt Organizations Committee of the tax section of the ABA took up many different aspects of this. Many extremely conservative opinions floated around. I heard one to the effect that colleges and universities should avoid inviting candidates to a forum on their premises because that would be involvement in the political process, and would endanger

their tax exemption. Mercifully, the 1978 elections came about and ended the turmoil that was going on in a lot of areas, especially in advocacy areas in the Church that I was concerned with. That tension in the Church will come up again next year, needless to say, and there are two particular areas of concern that I want to mention to you.

I think the Church is pretty well committed to the advocacy role in many different causes. The only way to avoid problems under this ruling is to withdraw and take an avenue that was somewhat disastrous in Germany in the thirties, in which very few voices were raised, and frequently raised too late.

One of the principal ideas that comes through in Al's presentation and in George Reed's letters with regard to the polls and distribution of information on the views of candidates, including voting records, is that they have to be objective. Al Scanlan, incidentally, put out and distributed in 1978 a voters' guideline on this. One of the things that seems to run through some of the writings is that if the poll is regularly taken, not just at election time, it is perhaps insulated from challenges. More important, is the question of who should take the polls and who should distribute them, and that seems to be a question of minimizing the risk. One diocese that I know of said: "We're not going to take the polls or distribute them, but we're going to let the Diocesan Council of Catholic Women do that." Well, if the DCCW's tax exemption were challenged, obviously it would not be a disastrous matter, at least in the part of the country that I come from.

The CDAC and the various other organizations can take polls and do the distribution in ways that don't involve, first of all, the diocese, and secondly, the parish itself, even though it is distributed in a parish.

The more important problem that I think is before this group, and before you at home, involves the Catholic press. The Catholic Press Association has stated in various publications and letters that it was planning to ask the IRS what is biased reporting, give the IRS samples of polls and ask them which are biased and which are unbiased, and raise questions of that nature. Basically they have been advised that they can expect all adverse rulings, as I understand it.

Now I have been engaged in some correspondence, and perhaps some disputes, with the Catholic Press Association and several editors simply on the question of their obligation to coordinate this entire matter with the General Counsel's Office of U.S.C.C. It strikes me to be almost axiomatic that this ruling is not separate and apart from everything else that is going on. This entire meeting has concentrated pretty much on governmental incursions into church affairs. Yet, the Catholic Press Association and those editors that have written, really do not see it that way and feel somewhat alienated from the institutional structure of the Church. That is the only way I can put it. Alienated, perhaps from dioceses, perhaps

from Diocesan Attorneys, and wanting to use Catholic Press Association counsel. That counsel was hired specifically for this ruling, and is not really involved in other church-state matters.

So I wanted to call that to your attention, and suggest to you, first of all, that this ruling is part of the overall concern of the Bishops' Committee on church-state relations that Bishop May chairs and the General Counsel's Office is staffing.

I would like to suggest to you that the diocesan papers, while there are other papers in the Catholic Press Association, are the main membership of CPA, are part of the diocese, and the diocese belongs to U.S.C.C., and thus belongs to this committee that the bishops have established. Their efforts, especially the diocesan papers' efforts, need to be coordinated in this overall resistance to governmental incursion. Now, I don't think that there is any question that the editors and the diocesan editors hire separate counsel, that the editors, and the diocesan editors in particular, have a right to listen to whoever they want to and to edit their papers however they want to.

In this day and age, and at this stage of proceedings in the Church, the diocesan attorneys not only need to be aware of this situation but need to be on top of it and hopefully see that the entire effort in battling this is coordinated through George Reed's office.