

FREEDOM FROM RELIGION *foundation*

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Sent via U.S. Mail and EMAIL to tba@albrittons.com

Mr. Thomas B. Albritton
Albrittons, Clifton & Moody, P.C.
P.O. Box 880
Andalusia, AL 36420

Re: \$3,000 grant for Baptist ministry

Dear Attorney Albritton:

Thank you for your November 6 email regarding the Covington County Commission's donation to the Covington Baptist Association for support of the Stanley School Men's Ministry. I was pleased to hear that the Commission rescinded their donation. However, today I received a disturbing report that Commissioner Harold Elmore plans to ask for the \$3,000 again, this time under the guise that it be used for building renovations.

Even if the money were earmarked for building renovations, this donation is still problematic. The Commission cannot escape the grant's religious purpose and Commissioner Elmore's involvement raises serious ethical concerns under Alabama law. I would like to clarify some confusion and urge the Commission to stand by the decision to rescind the donation. I am also resubmitting a public records request.

The donation to the men's ministry is unconstitutional

At the October 8, 2014 Commission meeting Commissioner Elmore moved that the County donate \$3,000 to a local men's ministry. The statements made by Commissioner Elmore at the commission meeting and our previous letter show that the undeniable purpose of this donation is to promote and proselytize the Christian religion.

The grant had – and would still have – a religious purpose: funding a Christian men's ministry. When asked whether it was exclusive to a Baptist group, Commissioner Elmore said, "No, it's just a men's ministry. If any denomination wants to attend, we don't even claim to be a denomination, that's what it's for, just trying to get folks to accept the Lord." To be clear, this is an exclusively Christian men's club.

Though the property housing the ministry, located at 17784 AL-55 in Andalusia, is sometimes referred to as the "Old Stanley School" or the "Stanley Community Center," Commissioner Elmore conceded that the "school house belongs to the church." Specifically the Judson Baptist Church, a member of the Covington Baptist Association, owns the property (17784 AL-55 in Andalusia).

By giving a \$3,000 grant to renovate a building owned by a church—for a project dedicated to proselytizing the Christian religion to non-adherents—the Commission would violate the clear dictates of the U.S. Constitution. *See Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971). To withstand constitutional scrutiny a government action must have a *secular* purpose. There is nothing secular about “just trying to get folks to accept the Lord.”

The Establishment Clause of the First Amendment prohibits any “sponsorship, *financial support*, and active involvement of the sovereign in religious activity.” *Walz v. NY Tax Comm’n*, 397 U.S. 664, 668 (1970) (emphasis added); *see also Bowen v. Kendrick*, 487 U.S. 589, 621 (1988); *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 754-55 (1976); *Hunt v. McNair*, 413 U.S. 734, 743 (1973). Direct aid is considered to have a “principal or primary effect” of advancing religion if the aid goes to institutions that are “pervasively sectarian.” *See Lemon, Bown, and Hunt v. McNair*.

Specifically, the government may not fund religious projects. *See Committee for Public Education v. Nyquist*, 413 U.S. 756, 777 (1973) (striking down repair grants meant to renovate parochial schools because the buildings were used for sectarian purposes); *see also Tilton v. Richardson*, 403 U.S. 672 (1971) (unanimously holding that government construction subsidies are unconstitutional if the buildings are used for religious activities); *Hunt v. McNair*, 413 U.S. 734 (1973) (upholding government construction bond only because the bond-financed buildings *were barred from being used for religious activities*); *Wirtz v. City of S. Bend, In.*, 813 F. Supp. 2d 1051, 1053 (N.D. Ind. 2011) (holding that transfer of government property to a religious school violates the United States and Indiana Constitution.)

Moreover, the Alabama Constitution similarly prohibits funding of religion. It provides that “*no one shall be compelled by law . . . to pay any tithes, taxes, or other rate for building or repairing any place of worship, or for maintaining any minister or ministry . . .*” Ala. Const. Art. I, § 3 (emphasis added). The \$3,000 direct grant to the Covington Baptist Association, the Judson Baptist Church, the Stanley School Men’s ministry, or any other entity for the purpose of supporting a quintessentially Christian ministry, emphatically and unequivocally violates the Alabama Constitution.

FFRF has won similar cases involving the unconstitutional funding of religion. *See, e.g., FFRF, Inc. v. Bugher*, 249 F.3d 606, 611 (7th Cir. 2001) (holding a direct grant to a religious school unconstitutional); *FFRF, Inc. v. Montana Office of Rural Health*, CV 03-30-BU-RWA, 2004 WL 6063926 (D. Mont. Oct. 26, 2004) (overturning grant to fund “faith-health project”); *FFRF, Inc. v. McCallum*, 179 F. Supp. 2d 950, 953 on reconsideration in part, 214 F. Supp. 2d 905 (W.D. Wis. 2002) *aff’d*, 324 F.3d 880 (7th Cir. 2003) (holding that funding faith-based addiction recovery is unconstitutional; funding holding was never disturbed, though participation issue was subject of additional litigation).

Simply re-labeling the Commission’s donation will not change the fact that this is public money the government is giving to a church for a religious project and therefore a violation of the U.S. and Alabama Constitutions. The Commission cannot escape its previous illegal

grant. Any court examining the issue will look at the grants as a whole. The Supreme Court has pointed out, “the world is not made brand new every morning.” *McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 866 (2005). Supreme Court precedent “sensibly forbid[s] an observer to ‘turn a blind eye to the context in which [the] policy arose.’ *Id.* (internal citation omitted). One cannot infer a governmental purpose in this case “only from the latest news about the last in a series of governmental actions.” *Id.* The nature and purpose of the building that Commissioner Elmore would have the Commission fund is religious. Therefore, any donation to the Stanley School Men’s Ministry or the building housing it, owned by the Judson Baptist Church, is tainted with the religious purpose of the first grant and the men’s ministry under *Lemon*.

Commissioner Elmore’s actions raise ethical concerns

I would also like to draw attention to serious ethical concerns raised by Commissioner Elmore’s involvement in this scheme. Alabama law prohibits public officials from using their official position to obtain personal gain for themselves or *for any business with which they are associated*. Ala. Code § 36-25-5(a). Commissioner Elmore serves as a deacon at the Judson Baptist Church, and is listed as one of the organization’s four trustees. Additionally, a 2012 “statement of authority” regarding Judson Baptist Church as an “incorporated religious association” reportedly lists Commissioner Elmore as one of three individuals authorized to act on behalf of the Church.¹

If the funding was indeed being sought for renovations, Commissioner Elmore solicited \$3,000 in public funds to benefit a building owned by his own church. Furthermore, Alabama public officials are prohibited from voting on legislation in which they know or have reason to know that they have a conflict of interest. Ala. Code § 36-25-5(b). Commissioner Elmore’s relationship with the Covington Baptist Association and the Judson Baptist Church present clear conflicts of interest and Commissioner Elmore should have recused himself from voting on this matter.

The Covington Baptist Association and the Judson Baptist Church are free to conduct their men’s ministry, but the government may not support or fund it or their buildings. We assume this matter is dropped, but in the event the Commission chooses to readdress the issue and provide support for this ministerial endeavor, FFRF will be inclined – at the very least – to submit an official complaint with the Alabama Ethics Commission.

May we hear from you, at your earliest convenience in writing, about what steps you are taking to ensure that the Commission does not once again overstep the bounds of the First Amendment?

Sincerely,


Katherine Paige
Legal Fellow

¹ See <http://www.andalusiastarnews.com/2014/11/06/county-rescinds-donation-to-cba/#respond>