

FREEDOM FROM RELIGION *foundation*

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July 19, 2017

SENT VIA EMAIL AND U.S. MAIL:

llee@phoenixida.com

Sal Rivera
President
Phoenix IDA c/o Lydia Lee
251 West Washington Street Fl. 9
Phoenix, AZ 85003

Re: Taxpayer funds used to support religion

Dear Mr. Rivera:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to constitutional concerns regarding the misuse of government funds to further a New York church's religious mission. FFRF is a national nonprofit organization with more than 29,000 members across the country, including more than 600 members in Arizona and more than 1,500 members in New York. FFRF's purposes are to protect the constitutional principle of separation between state and church and to educate the public on matters relating to nontheism.

A concerned New York taxpayer contacted us to report that the New York Quarterly Meeting of the Religious Society of Friends¹ (NYQM), a New York religious nonprofit, received government funds to expand its secular private school. Based on documents and information we have received from our complainant, described in more detail below, it appears that NYQM is now using proceeds from this taxpayer-subsidized expansion to advance NYQM's religious mission. We request that your office investigate these concerns and take appropriate action to ensure that NYQM is not using government funds for religious purposes.

NYQM's first loan agreement (2000)

Prior to 2015, NYQM owned Friends Seminary (FS), a secular private school in Manhattan founded in 1786.² In 2000, NYQM entered into a \$8,410,000 bond agreement with the New York City Industrial Development Agency (NYC IDA) to fund a campus redevelopment project for FS. This taxpayer-subsidized expansion project included the acquisition and improvement of two townhouses and a Masonic Temple that was acquired using a 1997 loan agreement (we understand that funds from the 2000 agreement were used to repay the 1997 loan). The townhouses and temple were defined in the agreement collectively as the "Facility."

¹ See nycquakers.org/.

² See friendsseminary.org/page.

These funds were offered to NYQM on the condition that neither the funds, nor proceeds from buildings purchased with the funds, be used to further NYQM's religious mission, as required by the Establishment Clause of the First Amendment to the U.S. Constitution. Page 12 of the agreement specifically states:

The [NYQM] covenants that, for a period equal to the useful life of the Facility, no part of the Facility shall be used for any purpose which would cause the Agency's financing of the Project to constitute a violation of the Establishment Clause of the First Amendment of the United States Constitution, and, in particular, the [NYQM] agrees that **no part of the Facility shall be used for any sectarian instruction** for the purposes of advancement of religion or as a place of formal religious service or worship or in connection with any part of a program of a school or department of divinity for any religious denomination; **and any proceeds of any sale, lease, taking by eminent domain of the Facility or other disposition thereof shall not be used for, or provide a place for such instruction, worship or program The provisions of this paragraph . . . shall, to the extent permitted and required by law, survive termination of this Agreement.** (emphasis added; copy of full agreement available upon request).

NYQM's second loan agreement (2010)

In 2010, NYQM entered into a \$25,475,000 loan agreement with the Phoenix Industrial Development Authority (Phoenix IDA). NYQM used these government funds to pay the balance of its first loan agreement. The second loan agreement also included an Establishment Clause provision prohibiting NYQM from using the funds to advance its religious mission:

Section 5.9 Prohibited Uses. No portion of the proceeds of the Bonds shall be used to finance or refinance any facility, place or building to be used (1) primarily for sectarian instruction or study or as a place for devotional activities or religious worship (copy of full agreement available upon request).

During a January, 2011 NYQM Business Meeting, the Clerk of NYQM Trustees stated that "Since the financing was transacted through a government agency, we are reminded of our constitutional prohibition from teaching religious education and from holding religious meetings in premises financed with public money including the Friends Seminary buildings."³ This loan agreement is still in effect.

Separation of FS from NYQM and use of proceeds from loan agreement to advance religion

In 2015, FS incorporated as a nonprofit separate from NYQM. As part of the separation arrangement, FS agreed to pay NYQM annual compensation—beginning at \$775,000 and increasing over time—for various property rights, including ownership of the two townhouses purchased with NYQM's first loan agreement and 20,500 square feet of development/air rights above the townhouses needed to

³ See enclosed 2011 NYQM Business Meeting notes.

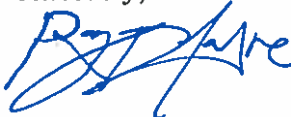
complete FS's campus redevelopment project.⁴ In a draft "Implementation Plan" dated January, 2017, NYQM lists the \$775,000 as "FS – Lease base," which makes up 28% of NYQM's total expected revenue. The Implementation Plan outlines NYQM's planned use of this revenue to maintain its church buildings and further its religious mission.⁵

This arrangement appears to violate both NYQM's loan agreements and the Establishment Clause. NYQM used bond funds from the NYC IDA and the Phoenix IDA to acquire property for FS's secular use, but it now charges FS an annual fee to use the property, and NYQM treats those proceeds as ordinary church assets. In effect, it appears that NYQM is using taxpayer-subsidized property as a source of church income.

As the NYC IDA and Phoenix IDA were both plainly aware, providing discretionary funds to NYQM that are used to advance NYQM's religious mission would violate the Establishment Clause of the First Amendment. *See Freedom From Religion Foundation v. Bugher*, 249 F.3d 606, 612 (7th Cir. 2001) ("states may not make unrestricted cash payments directly to religious institutions."); *Wirtz v. City of S. Bend*, 813 F.Supp.2d 1051 (N.D. Ind., 2011) (ruling that a land transfer to a religious institution, even with public benefit provided, violated the Establishment Clause.). In *Wirtz*, the court discussed at length the fact that discretionary redevelopment grants are not the same as constitutionally permitted neutral programs. *Id.* at 1067–68. Government officials have an affirmative obligation to ensure that government funds are not used to advance religion.

We request that your office investigate these concerns and take appropriate steps to ensure that NYQM is not using proceeds from its government loan agreements—including proceeds from the lease or sale of property acquired with those funds—to maintain its places of worship or otherwise advance religion. Specifically, we request that the Phoenix IDA enforce the Establishment Clause provision of its contract with NYQM. Please respond in writing at your earliest convenience so that we may assure our complainant that this issue is being resolved.

Sincerely,



Ryan D. Jayne, Esq.
Elaine & Eric Stone Legal Fellow
Freedom From Religion Foundation

Enclosure

⁴ See enclosed Property Settlement Summary, dated Dec. 4, 2015.

⁵ Draft Implementation Plan available upon request.

Jan. 23, 2011 NYQM Business Meeting

Interim Report – NYQM Trustees

Seeger Trusses and Friends Seminary Refinancing

The Trustees of the New York Quarterly Meeting (NYQM) generally report once a year in April. Because two significant events have occurred recently, Trustees felt the need for an interim report.

The Seeger Center is located in the Rutherford Place Central Old School Building on the top floor and is used solely by the school. The NYQM office is on the ground floor and other tenants include AFSC and YSOP. In 1993, Friends Seminary suspended a floor from wooden trusses dating from the mid 1800's. The trusses were not intended for this purpose and almost immediately the beams started to separate. Although the trusses were reinforced and no further deterioration was visible, some trustees remained concerned. This concern was supported by an engineer's report and brought to the school's attention in February 2010. The school agreed to address the issue and approached trustees for approval during the summer in a rush to get the work done before school reconvened in the fall. Not only do trustees not normally meet during the summer but the handbook assigns property responsibility to three additional committees, including the Friends Seminary and 15th Street property committees of the Quarter. You can imagine the difficulty in finding unity on a complicated, expensive and time sensitive project like this. Trustees hired the engineer who had previously discovered the severity of the problem, to offer a second opinion on the project as it had already been designed and approved by the school, which also agreed to pay for the repairs. The trustees' engineer recommended a different, less convenient and more expensive design for the trusses, which was argued to be a superior approach that complied with building codes and promised to be a longer term solution. After much discussion, trustees mandated that the school use their preferred design at an additional cost, which was determined later to be \$199,000. This approach also meant that the school had to vacate the space for a longer duration. In consideration of this hardship, with one member standing aside, Trustees recommended a \$100,000 contribution from NYQM to Friends Seminary to help defray the cost since NYQM owns the property. The Audit and Budget Committee elected not to include this contribution in the 2011 budget because the 15th Street Property Committee was unable to reach unity. The process of going through this project highlighted the lack of governance clarity of our handbook in regard to property issues. Trustees recognize that its working relationship with Friends Seminary has been strained and in order to improve communication and mutual understanding, we have appointed a joint sub-committee with and at the suggestion of the Friends Seminary School Committee.

The second event was the refinancing of Friends Seminary's \$25.5 million of debt. This tax exempt financing will be for 28 years at a very favorable 4.35% interest rate. Most surprisingly, no NYQM real property assets, including the Meetinghouse, the central Old School Building and the corner school building, were encumbered in this financing, only those of the school. As a result, encumbered NYQM assets from the prior financing were released. Friends Seminary has solidified its long term planning and improved its financial position with this financing. Since the financing was transacted through a government agency, we are reminded of our constitutional prohibition from teaching religious

education and from holding religious meetings in premises financed with public money including all the Friends Seminary buildings. We have recently received conflicting legal opinions on this issue centered on whether our business meetings are considered worship. Under either opinion, religious education and meetings may be held in NYQM premises not financed by the school. The financing is quite an achievement for the school and for not encumbering NYQM. Because the school is owned by NYQM, financing documents were executed by NYQM on behalf of Friends Seminary requiring two sets of NYQM lawyers to review documents on behalf of the school and NYQM. It reminds us of the need for the school to become incorporated, gain its independent legal status and negotiate its own legal agreements. Currently, the school's legal agreements bind NYQM and place trustees in the awkward position of having to review and second guess the school.

Friends with questions and concerns are invited to talk to me or other trustees. We will give our normal annual report in April.

Michael Schlegel

Clerk of NYQM Trustees

January 21, 2011

Property Settlement Summary

New York Quarterly Meeting [Trustees] & Friends Seminary

December 4, 2015

The New York Quarterly Meeting [Trustees] and Friends Seminary have agreed on the following terms for a property settlement pursuant to separate incorporation:

- 1) The Masonic Temple and the Townhouses will be deeded to Friends Seminary
- 2) The 1964 Building will be provided to Friends Seminary in a 99-year ground-lease, giving Friends Seminary autonomy over its internal and external configuration and use. The lease can be renewed for a second 99 years if Friends Seminary is still occupying the property on expiration.
- 3) The Old School Building and its Courtyard will be provided to Friends Seminary in a 75-year triple-net lease, giving Friends Seminary autonomy over its internal configuration and use.
- 4) The Central Building and the Meetinghouse will be retained by NYQM. The property agreement will provide for shared use of the Meeting Room, the Lounge, the Common Room, and the Inner and Meetinghouse Courtyards during weekdays and at other times as scheduled. Friends Seminary will have exclusive use, and the responsibility for maintenance and repair, of the Cafeteria and the Seeger Center (with sharing of the Cafeteria as customary). The NYQM will otherwise have responsibility for maintenance, improvement, and repair for all these spaces.
- 5) Friends Seminary will receive the 20,500 sf of development rights that it needs to complete the campus redevelopment project.
- 6) Friends Seminary will convey to NYQM \$775,000 annually for this use. As NYQM is assuming responsibility for the upkeep of these historic properties, NYQM commissioned a preliminary facilities assessment to review its likely capital costs going forward. This assessment revealed a substantial backlog of needed improvements to maintain these spaces. A preponderant share of Friends Seminary's financial contribution to the QM will be dedicated to this work, and to the ongoing needs of the aging buildings, the fruits of which will be shared by both. Additionally, Friends Seminary and NYQM will each contribute \$175,000 annually to a Capital Reserve Fund to insure that funds are available for needed improvements going forward. These figures will be subject to resets and escalations to account for changing costs and inflation.

In light of the complexity of executing these changes, and also in light of Friends Seminary's space and financial needs in the three years ahead during which it will be pursuing its construction project, these terms, both spatial and financial, will roll out sequentially at a rate agreed to by both.