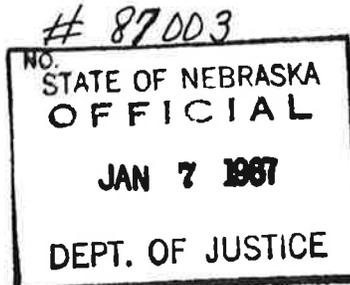


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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DATE: December 29, 1986

SUBJECT: Religious Exemption Contained in Nebraska's Fair Employment Practices Act; Neb.Rev.Stat. §48-1103 (Reissue 1984)

REQUESTED BY: Lawrence R. Myers  
Executive Director  
Nebraska Equal Opportunity Commission

WRITTEN BY: Robert M. Spire  
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QUESTION: Is the People's City Mission a Religious Organization Which is Exempt From the Nebraska Fair Employment Practice Act under Neb.Rev.Stat. §48-1103 (Reissue 1984).

CONCLUSION: Yes.

Although there are no cases construing the Nebraska act, there are cases which discuss the provision contained at 42 U.S.C. §2000 e-1. Both sections provide an exemption for "A religious corporation, association or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation association, or society of its religious activities." Neb.Rev.Stat. §48-1103 (Reissue 1984).

Your opinion request suggests that perhaps a religious organization must be of a particular denomination to qualify for the exemption and that nondenominational organizations do not qualify for the exemption. However, case law does not recognize this distinction.

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The leading case in this area is McClure v. Salvation Army, 323 F.Supp. 1100 (1971) aff'd at 460 F.2d 553 (5th Cir. 1972), cert. denied, 409 U.S. 896, 93 S.Ct. 132 (1972). In McClure, the plaintiff, a female officer of the Salvation Army, charged the Salvation Army with sex discrimination in its ministerial appointments. The court, in discussing the mission of the Salvation Army, stated:

The original mission of The Salvation Army has remained unchanged. It is to seek the unsaved, to secure the commitment of those who are determined to live a Christian life, to give such people an opportunity for serving, remembering that membership in The Salvation Army, even as a soldier, imposes a greater burden upon an individual than he would assume by belonging to another church.

Id. at 1102.

The Salvation Army services have a preaching part, congregational singing, scripture reading, prayer, and the invitation to the unsaved. The court said "The Salvation Army is a religion regardless of its lack of traditional houses of worship." Id. at 1104.

The court relied on an earlier Georgia opinion which also held the Salvation Army to be a religion. Citing Bennett v. City of LaGrange, 153 Ga. 428, 433, 112 S.E. 482, 485 (1922), the court said:

Its work is primarily directed to the spiritual, moral, and physical reformation of the working classes, to the reclamation of the vicious, criminal, dissolute, and degraded, to visitation among the poor, lowly, and sick; and to the preaching of the gospel and the dissemination of Christian truth by means of open-air and indoor meetings. So it preaches the gospel. It disseminates Christian truth. It is a church, a sect, and a religious institution. [Emphasis supplied.]

Id. at 1105.

In Fike v. United Methodist Children's Home of Virginia, Inc., 547 F.Supp. 286 (1982), aff'd, 709 F.2d 284 (1983), aff'd 547 F.Supp. 28 (1982), the court held that a children's home, founded by the Methodist Church and with close ties to the Methodist Church, was not a religious association. The court noted that the direction given to the day to day activities of the Methodist Children's Home is practically devoid of religious training. Mere guidance of troubled youth, although charitable and admirable, is not necessarily a religious purpose. The court held that for purposes of exemption under

§2000e-1, the United Methodist Children's Home is, quite literally, Methodist in name only.

As these cases illustrate, the determination of whether an employer qualifies for a religious exemption depends on the nature of the work performed by the employer, not on whether the employer is associated with a particular religious sect.

In examining the activities of the People's City Mission, it appears that their daily activities center around a religious theme. The People's City Mission was founded in 1907 as a home "where evangelistic services shall be conducted and where transient and needy men, women and children may be given temporary sustenance and shelter." Amended and Substituted Articles of Incorporation of the People's City Mission Home.

Item No. 4 of the Mission's Purpose Statement reads: "Presenting to all who will listen the message of salvation through our Lord, Jesus Christ." This purpose is accomplished by the nightly chapel services and one-on-one witnessing.

Further, the requirements for a family shelter caseworker contained in the job description provide that the caseworker must possess a willingness to serve the Lord in a ministry that deals primarily with low-income people. These recorded purposes and activities should qualify the People's City Mission as a religious organization which is exempt from the provisions of the Nebraska Fair Employment Act.

Having determined that the People's City Mission qualifies for a religious exemption, it must be determined what activities are protected by the exemption. The exemption in the federal act originally provided that a religious organization was exempt "with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association or society of its religious activities." 42 U.S.C. §2000e-1 (1964) (Emphasis added).

The 1972 amendment deleted the word "religious" before the final word "activity." In addition, the 1972 amendment added the previous separate exemption to religious educational institutions under §2000e-2 to the exemption provisions contained under §2000e-1. The Nebraska exemption is patterned after the original 1964 Civil Rights Act and covers only religious activities. However, cases involving the amended federal act have held that exempting "all activities" of a religious organization from the provisions of Title VII is unconstitutional. Therefore, under any reading of the statute, only "religious" activities are exempt under Title VII. Amos v. Corporation of the Presiding Bishop, 594 F.Supp. 791 (1984); King's Garden, Inc. v. F.C.C., 498 F.2d 51 (1974).

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Cases under the original act and under the amended act have held that a religious exemption does not allow a religious organization to discriminate on the grounds of race, national origin, or sex. McClure v. Salvation Army, supra; Rayburn v. General Conf. of Seventh-Day Adventists, 772 F.2d 1164 (4th Cir. 1985); E.E.O.C. v. Mississippi College, 626 F.2d 477 (5th Cir. 1980); E.E.O.C. v. Pacific Press Pub. Ass'n, (9th Cir. 1982).

Sincerely,

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