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The Honorable Mark W. Killian  
State Representative  
Capitol Building - House Wing  
Phoenix, Arizona 85007

Re: I90-026 (R89-009)

Dear Representative Killian:

You have requested our opinion concerning application of A.R.S. §§ 10-1044.01, 10-1081.01 and 10-1100 to a religious entity offering goods and services to handicapped or economically or socially disadvantaged persons.

First, you have asked whether such an entity may qualify for exemption from the requirements of the above statutes pursuant to A.R.S. §§ 10-1044.01(D)(6), 10-1081.01(B)(3) and 10-1100(B)(3) if the organization, as a substantial portion of its business, offers goods or services on a regular basis to disadvantaged persons and requests some payment if the recipient can afford it. You also have asked whether such a religious organization may claim the same exemption if it offers programs which are structured so that recipients "pay something." We conclude that a religious organization does not qualify for the exemption if, as a substantial portion of its business, it offers goods or services to the public on a regular basis and requires payment in exchange for providing the service or merchandise. Therefore, if the payment request or the organization's program is structured to require such payment, the religious entity may not claim the exemption.

Sections 10-1044.01, 10-1081.01 and 10-1100 were enacted in House Bill 2368 as amendments to title 10, chapter 5,

article 5 of the Arizona Revised Statutes. Laws 1989 (2nd Reg. Sess.) Ch. 222. Section 10-1044.01 requires persons acquiring all or substantially all of the assets of a tax-exempt corporation located in this state to give public notice and conduct public hearings concerning the transaction if assets formerly devoted to tax-exempt purposes are to be used for non-tax-exempt purposes. Section 10-1081.01 requires corporations to include in their annual reports filed with the Corporation Commission reports of income and expenses, a balance sheet and the names of the five "most highly compensated officers or directors receiving cash compensation" from each corporation. Corporations must also file copies of their conflict of interest policies (required by section 10-1100). Section 10-1100 requires corporations doing business in this state to adopt a "conflict of interest policy" concerning transactions between each corporation and persons having a financial interest in the corporation.

Each of the above statutes provides an exemption for the following:

A corporation organized for religious purposes that does not have as a substantial portion of its business, the offering of goods or services on a regular basis to the public for remuneration.

A.R.S. § § 10-1044.01(D)(6), -1081.01(B)(3), -1100(B)(3).<sup>1/</sup>

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<sup>1/</sup>Because you indicated that these religious organizations provide goods and services to the public as a substantial portion of their business, we assume that you are concerned with application of the statute to specific practices which may constitute the offering of goods or services "for remuneration." Nevertheless, an organization organized for religious purposes may qualify for the exemption if the offering of goods or services to the public for remuneration does not constitute a "substantial portion" of the organization's business. The ordinary and common meaning of "substantial" has been construed as "more than insubstantial or slight." Skyview Cooling Co. v. Industrial Commission of Arizona, 142 Ariz. 554, 558-559, 691 P.2d 320, 324-325 (Ct. App. 1984). See State v. Harpham, 2 Ariz. App. 478, 488, 410 P.2d 100, 110 (1966) ("substantial" construed as more than "insignificant"); Deputy Sheriff's Association v. Chelan County, 109 Wash.2d 282, 745 P.2d 1, 6 (1987) ("substantial part" means "the converse of insubstantial or immaterial"). Therefore, such an organization may qualify for the exemption if the offering of goods or services to the public for remuneration is an "insubstantial," "slight" or "insignificant" portion of its business.

The answer to your first two questions depends upon whether the type of payment that you described constitutes offering goods or services to the public "for remuneration." A.R.S. §§ 10-1044.01(D)(6), 10-1081.01(B)(3), 10-1100(B)(3). In determining the intention of the legislature we look first to the ordinary meaning of the words expressed in the statute, and then to the subject matter, effects and consequences and spirit of the act as a whole. Kriz v. Buckeye Petroleum Co., Inc., 145 Ariz. 374, 377, 701 P.2d 1182, 1185 (1985). Words of a statute will be given their common and ordinary meaning unless the context of the statute requires otherwise. State Compensation Fund v. Nelson, 153 Ariz. 450, 453, 737 P.2d 1088, 1091 (1987).

In 1978, the Arizona Court of Appeals, in the context of unemployment insurance statutes, discussed the common meaning of "remuneration" as follows:

A survey of various definitions of "remuneration" indicates that it has a broad meaning. Webster's New World Dictionary of the American Language, Encyclopedic Edition (1951) defines "remuneration" as "1. a remunerating. 2. that which remunerates; reward; pay; recompense; compensation." "Remunerate" is "to give or pay (a person) something for some work or service done, loss incurred, etc.; reward; recompense . . . ." Webster's Third New International Dictionary (17th Ed., 1976) defines "remuneration" as "1: an act or fact of remunerating 2: something that remunerates" and "remunerate" as "1: to pay an equivalent for (as a service, loss expense) 2: to pay an equivalent to (a person) for a service, loss, or expense". Under the definition for "pay" this dictionary compares "pay" with some of its synonyms: "REMUNERATE, generally more formal than PAY, is applicable to rewards generous, not contracted for, or unexpected . . . ."

Dearing v. Arizona Department of Economic Security, 121 Ariz. 203, 204-205, 589 P.2d 446, 447-448 (App. 1978). The court further observed from the above definitions that "'Remuneration' does not require an obligation or a set, contracted amount." Id.

Based upon the common meaning of "remuneration" as used in sections 10-1044.01(D)(6), 10-1081.01(B)(3) and 10-1100(B)(3), we conclude that the Legislature intended to exempt religious organizations which regularly provide goods or services without charge to recipients. We conclude that a religious corporation qualifies for the exemption only if it does not, as a substantial portion of its business, offer goods or services on a regular basis to the public in exchange for payment or compensation. A religious corporation does not lose the exemption if it provides goods or services without charge

and merely requests a donation from recipients of the goods or services. However, if such a corporation is "structured" to require payment in exchange for goods or services, it does not qualify for the exemption.

The answer to your final questions depends on the meaning of the following exemption from these statutory requirements:

A corporation that offers goods or services only to members who are entitled to vote for its board of directors.

A.R.S. § § 10-1044.01(D)(5), -1081.01(B)(2), -1100(B)(2).

You have asked whether a non-profit organization may qualify for the above exemption if such an entity permits only a portion of its membership to vote for its board of directors or offers goods or services to members' "guests" on a limited basis. The entity may qualify for the exemption if its goods and services are offered "only to members who are entitled to vote for its board of directors." The word "only" means "that is without companions or associates: LONE, ISOLATED . . . being one or more of which there exist no others of the same class or kind: alone in an indicated or implied category." Webster's Third New International Dictionary 1577 (1976). Therefore, the exception applies to corporations offering goods or services to members who are entitled to vote for its board of directors, and to no others. Consequently, a corporation would not qualify for the exemption if it offers goods or services to others who do not vote for the corporation's board of directors, whether they be non-voting members or "guests."

Sincerely,



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