



**citizens for responsibility
and ethics in washington**

October 18, 2006

The Honorable Mark W. Everson
Commissioner
Internal Revenue Service
950 L'Enfant Plaza, S.W.
5th Floor
Washington D.C. 20024

Re: Church support of Kline campaign

Dear Commissioner Everson:

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests an immediate Internal Revenue Service ("IRS") investigation into the activities of churches in support of Kansas Attorney General Phill Kline's re-election campaign. Based on an internal campaign memorandum, it appears that Attorney General Kline may be soliciting the aid of churches throughout the state of Kansas to aid in his campaign. Many of the activities described in the memorandum violate the strict prohibition on electioneering contained in federal tax law. Because you pledged earlier this year to investigate violations of tax law during, and not after, the election cycle, we ask that you look into this matter immediately. Pursuant to IRS procedures, CREW is also submitting this complaint to the IRS field office in Dallas.

IRC Section 501(c)(3) Restrictions

Public charities, including churches, are granted special privileges under federal tax law. Among these are exemption from most income tax, and the ability to confer tax-deductibility to donor contributions. In order to qualify for these desirable attributes, a public charity must be organized exclusively to engage in charitable activities, demonstrate a minimum level of public support, ensure that its lobbying activities are not a substantial part of its overall activities, and strictly avoid intervening in the elections of public officials. IRC § 501(c)(3). Should a public charity fail to meet these basic terms, the law states that it is not qualified to remain tax exempt. 26 C.F.R. § 1.501(c)(3)-1(c)(3).

Tax law absolutely prohibits public charities from participating or intervening in any political campaign on behalf of, or in opposition to any candidate for public office. 26 C.F.R. § 1.501(c)(3)-1(c)(3)(iii); United States v. Dykema, 666 F.2d 1096, 1101 (7th Cir. 1981), cert.

denied, 456 U.S. 983 (1982); Association of the Bar of the City of New York v. Commissioner, 858 F.2d 876 (2d Cir. 1988), cert. denied, 490 U.S. 1030 (1989). A candidate for public office is defined as an individual who offers himself or herself, or is proposed by others, as a contestant for an elective federal, state, or local office. G.C.M. 39811 (June 30, 1989). The IRS considers all of the facts and circumstances in determining whether a public charity has illegally intervened or participated in a political campaign. See Rev. Rul. 78-248, 1978-1, C.B. 154. A public charity participates or intervenes in a political campaign if it does anything that supports or opposes a candidate through any method of distribution, including but not limited to, oral statements, or distribution of written or printed materials. G.C.M. 39811 (June 30, 1989); See also 26 C.F.R. § 53.4945-3(a)(2).

The IRS is solely responsible for enforcing the provisions of IRC § 501(c)(3). See IRC § 7801(a)(2). As a function of this enforcement authority, and a finding of increased political activity among charities and churches in 2004, the IRS advised the regulated community of its expanded education efforts and enforcement activities. Remarks of Commissioner of Internal Revenue Mark W. Everson at the City Club of Cleveland, (February 24, 2006), <http://irs.gov/irs/article/0,,id=154788,00.html>; See also Tax Guide for Churches and Religious Organizations, I.R.S. Pub. 1828 (“Pub. 1828”)(September 2003).

Background

Attorney General Kline is running for reelection, and according to media reports, has actively engaged the religious community to support those efforts. Scott Rothschild, Leaked memo details strategy, *Lawrence Journal-World* (September 12, 2006)(attached as Exhibit A). Several media outlets covering the race received a leaked internal campaign memorandum authored by Attorney General Kline. Steve Kraske and Jim Sullinger, Memo gives inside look at Kline AG campaign, *The Kansas City Star* (September 13, 2006)(attached as Exhibit B). The memorandum, entitled “church efforts,” details a multi-pronged strategy to recruit Kansas churches and pastors to support Attorney General Kline’s reelection. See Memorandum from Attorney General Phill Kline to Bill Roche and Sylvia Chapman (August 8, 2006)(attached as Exhibit C). The memorandum includes several activities that constitute illegal support of the Kline campaign by Kansas churches.

Use of church resources for campaign literature distribution

In the memorandum, Attorney General Kline urged his staff to “get additional churches involved” in drawing crowds to his campaign events. Id at 1. He further asked his staff to “[s]ign up folks to help with lit drops etc. Some churches have already volunteered to do this.” Id at 2. Attorney General Kline identified Light of the World Church and Wanamaker Woods Nazarene Church, both in Topeka, KS, and an unspecified Basehor-Linwood, Kansas church as churches that had agreed to help with the literature distribution. Id.

It also appears that the Kline campaign is approaching individual pastors for permission

to distribute campaign materials in or near churches.

Please try to get literature into every one's hands. *Check and work with pastor to see what is comfortable.* In most instances we should be able to place materials under the windshield of cars. An invite and palm card? Can set up volunteers at or near exit of church to give out yard signs. We must heighten our profile as much as reasonably possible.

Id. at 3-4 (emphasis added). While it is legal for church leaders in their individual capacity to endorse or support campaigns, it is illegal for them to facilitate the use of church resources. Pub. 1828 at 7.

Based on the totality of the circumstances, it appears that the Kline campaign has approached several Kansas churches and may have successfully recruited their institutional efforts to redistribute campaign literature. The IRS has stated that church voter education activities that are biased in favoring one candidate over another, oppose a candidate in some manner, or have the effect of favoring a candidate or group of candidates, are prohibited under tax law. *Id.* To the extent any church distributed campaign materials for the Kline campaign it would be promoting his candidacy in violation of IRC § 501(c)(3).

Use of church resources to provide partisan forums

Attorney General Kline's memorandum also details efforts to pursue speaking engagements before various churches and church-sponsored groups. In a section dubbed, "Target efforts," Attorney General Kline noted:

TBC – I must speak with Pastor. Also, speak with Marvin Spees about getting me before their men's group.

Pastor Jerry Johnston's church. Must get on calendar

KCK – effort to get in black and Hispanic church in KCK.

Exhibit C at 4. The churches identified here are the Topeka Bible Church ("TBC"), First Family Church in Overland Park, Kansas ("Pastor Jerry Johnston's church") and an unknown number of churches serving the black and hispanic communities in Kansas City, Kansas ("KCK"). The men's group sponsored by Topeka Bible Church is the TBC IronMen Ministries. See TBC IronMen Ministries, <http://www.topekabiblechurch.org/Ministries/Mens.htm>. It is not clear whether these appearance were designed to be campaign events; however, given that the memorandum was addressed to campaign staffers, and discussed campaign-related activities, it is reasonable to conclude that Attorney General Kline intended to use these churches for campaign events.

In the memorandum, Attorney General Kline also referred to a special campaign video to be distributed to churches. As a part of this discussion, he noted that the campaign should distribute a document explaining the rules regarding the presentation of the video:

Should prepare guidance sheet for those who are showing the church video. 2-pager that includes... IRS rules guidance regarding what they can and cannot do (this should not take long – no use of church assets, can show it at church as long as they do not deny opposition of showing their own video – no need to invite the other, just cannot deny – etc)...

Exhibit C at 4. The Attorney General’s statement incorrectly interprets IRS rules on the presentation of such videos. These video presentations would be analogous to in-person candidate appearances, which require churches to provide equal opportunity to all political candidates seeking the same office. See Rev. Rul. 86-95 (1986-2 C.B. 73); See also Pub. 1828 at 9. In distributing this incorrect information, the Kline campaign may have caused Kansas churches to violate well-established IRS rules.

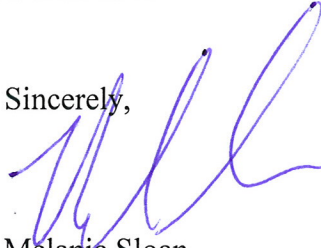
Attorney General Kline’s campaign memorandum details the use of church events to solicit people to attend off-site campaign fundraisers and receptions. See Exhibit C at 3-4. On September 16, 2006, Attorney General Kline appeared before the TBC IronMen Ministries of the Topeka Bible Church before a crowd of about 60 members. John Hanna, Kline’s ‘church effort’ continues, *Associated Press* (September 18, 2006)(attached as Exhibit D). Following Attorney General Kline’s speech, a campaign supporter invited the crowd to attend a “political reception” at an off-site location. Id. IRS rules regarding candidate appearances strictly prohibit political fundraising, or use of church resources to indicate support or opposition to a candidate. IRS Pub. 1828 at 8-9. Based on the memorandum and the solicitation at the TBC IronMen Ministries breakfast, it appears that Topeka Bible Church may be in violation of IRC § 501(c)(3).

Conclusion

Based on the facts and circumstances described above, CREW respectfully requests that the IRS conduct a full-scale investigation to determine whether any Kansas churches engaged in prohibited electioneering in support of Attorney General Phill Kline. Commissioner Everson, in February, before the City Club of Cleveland, you said, “Are we going to let these political activities spread to our charities and churches? Now is the time to act, before it is too late.” CREW agrees, and asks that you immediately order an investigation into these activities before the end of this election cycle.

Thank you for your consideration of this important matter. Please contact me if I can provide additional information or be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MS', is written over the word 'Sincerely,'.

Melanie Sloan
Executive Director
Citizens for Responsibility and Ethics
in Washington

Enclosures

cc: IRS – EO Classification, Dallas