

ST 07-14

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

ABC,

Applicant

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No. 00 ST 0000
Denial of exemption

Mimi Brin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mark Dyckman, Special Assistant Attorney General, for the Illinois Department of Revenue; Jane Doe for the ABC

Synopsis:

The ABC (“ABC” or “Applicant”) sought an exemption from the imposition of tax under the Illinois Retailer’s Occupation Tax Act (35 ILCS 120/1 et seq.) (“ROTA” or “ROT”) and the Illinois Use Tax Act (35 ILCS 105/1 et seq.) (“UTA” or “UT”) as an entity organized and operated exclusively for charitable purposes. 35 ILCS 120/2-5; 105/3-5. The Department denied applicant’s request twice, with ABC formally protesting and requesting a hearing following the Second Denial of Sales Tax Exemption. A hearing was held whereat oral and documentary evidence was received.¹ Following the submission of all evidence and a review of the record, it is recommended that this

¹ The hearing was held on January 16, 2007 and the transcript of that proceeding is cited herein as “1/16 tr.”. Post-trial arguments were heard on April 9, 2007, and the transcript of that proceeding is cited as “4/9 tr.”.

matter be resolved in favor of the Department and the following Findings of Fact and Conclusions of Law are made in support of this recommendation:

Findings of Fact:

1. The ABC requested an exemption identification number (35 ILCS 120/1g) from the Department on the basis that it was exempt from taxes imposed by the ROTA and the UTA as an entity organized and operated exclusively for charitable purposes. Department Ex. 1 (Second Denial of Sales Tax Exemption). The Department denied the request. Id.
2. ABC is incorporated, as of February 25, 2001, in the State of Illinois under the General Not For Profit Corporation Act of Illinois. Applicant Ex. 10 (Illinois Secretary of State certificate of incorporation). No Articles of Incorporation were offered for the record.
3. Applicant is exempt from the imposition of federal income tax under section 501(c)(3) of the Internal Revenue Code. Applicant Ex. 9 (Internal Revenue letters, May 1, 2003; August 9, 2005)
4. Applicant is managed by a Board of Directors that appoints an Executive Director who is “responsible to the board for the management and staffing of the Corporation [ABC].” Id. at Article III-Board of Directors, Section 1. None of the Directors is compensated for services rendered to ABC. Id. at Section 7; Applicant Ex. 12 (Federal Statements, Statement 5 Form 990, Part V, List of Officers, Directors, Trustees, and Key Employees)
5. Ms. Smith (“Smith”) is applicant’s current executive director and she has held that position since 1997. 1/16 tr. p. 24; App. Ex. 28, p. 7 (“Still the

Wild West? A 10-Year Look at Campaign Finance Reform In Illinois...An Occasional Paper of the Paul Simon Public Policy Institute”).

She did not appear at the hearing.

6. Applicant’s stated purpose, as set forth in its Bylaws, “shall be to conduct research and advocate reforms to promote public participation in government, address the role of money in politics and encourage integrity, accountability and transparency in government.” Applicant Ex. 7, Article II-Purpose (BYLAWS OF THE ABC)
7. Applicant has no capital stock or shareholders, nor is it a member organization. App. Ex. 7.
8. Applicant offers its research services, publications and website database, primarily, to any person or entity that makes a request and does so free of charge. 1/16 tr. passim.
9. For tax year ending 6/30/05, ABC’s total revenue was \$441,044. App. Ex. 12 (Forms 990, AG990-IL). ABC received public support of \$361,945 (App. Ex. 12) with \$260,000 of this from the Joyce Foundation (id.), \$30,000 from the Proteus/Piper Fund (id.) and \$70,000 from the Open Societies Institute (id.).
10. For that tax year, applicant was paid \$58,339 for services, with most of this income from the University of Illinois, Springfield, for the Sunshine Database. Id.; 1/16 tr. pp. 35-6, 39 (, ABC auditor (“Auditor”))
11. ABC’s primary concentration is on the issues of campaign finances and related government ethics. App. Exs. 1, 2, 5, 11, 22, 24, 26, 27, 28.

12. ABC advocates and lobbies for campaign finance and government ethics reforms and spearheads legislation in these areas. App. Exs. 16, 27.

Conclusions of Law:

The UTA and the ROTA provide for exemption from the imposition of the respective taxes on the gross receipts from the sale of tangible personal property to entities “organized and operated exclusively for charitable, religious, or educational purposes...” 35 ILCS 105/3-5 (4); 120/2-5 (11). ABC requested an exemption number pursuant to these provisions (1/16 tr. p. 12 (opening statements) (“ABC operates exclusively for charitable purposes by relieving a burden on this government and by serving the public interest.”)), which the Department denied on the basis that ABC did not demonstrate that it operated for exclusively charitable purposes.

The well-settled law in Illinois regarding taxation exemption is that a statute granting exemption must be strictly construed in favor of taxation and against exemption. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2nd Dist. 1995) Further, the exemption claimant has the burden of proving its entitlement clearly and conclusively (id.) with all facts construed and debatable questions resolved in favor of taxation. Id.

Although it was a case concerning a property tax exemption, Illinois courts have used guidelines set forth in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) in determining whether an entity qualifies as one organized and operated for charitable purposes. Wyndemere Retirement Community v. Department of Revenue, supra; Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1st Dist. 1987). These guidelines are that the entity: (1) has no capital, capital stock or shareholders; (2)

earns no profit or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in any private sense to any person connected with it; and (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses, which benefits persuade to an education or religious conviction, for their general welfare-or in some way reduces the burdens of government. Methodist Old Peoples Home v. Korzen, *supra* at 157. These factors are balanced with an overall focus on whether and how the organization serves the public interest and lessens the State's burden. See DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-9 (2nd Dist. 1995)

Also, the term "exclusive" means the primary, and not incidental or secondary purpose. Gas Research Institute v. Department of Revenue, *supra*. In addition, while there may be restrictions on a group benefited by the entity's charity, "the service rendered to those eligible must act to relieve the public of an obligation, moral or economic, which it would otherwise have to such beneficiaries or it must confer some general benefit onto the public." *Id.* at 435

In the instant matter, there is no question that the applicant has no capital, capital stock or shareholders. In addition, the Department conceded that applicant's funding was primarily from public and private charities. 4/9 tr. p. 58. The Department did not challenge that the applicant does not provide its research, publications and website database to the public or to any legislator or elected official free of charge, nor does the

record suggest otherwise.² Further, the record supports a conclusion that applicant is not a member organization and it does not charge dues that would give those paying such monies any privileges greater than that of any member of the public who would request research results from ABC. Even in light of all of this, applicant has not carried its burden to convince that it operates primarily for charitable purposes.

The parties agree that there is no published legal determination, in Illinois or elsewhere, that an entity organized and operated exactly as this applicant, is deemed to be a public charity. 4/9 tr. pp. 16, 33. While ABC avers that it qualifies as a charity under Illinois tax exemption statutes, it recognizes that its purported charity is non-traditional in that it does not provide housing, food, clothing, money or life-sustaining services to those without means to get them. 4/9 tr. pp. 15, 44. In those cases wherein entities were examined pursuant to claims of tax exemption as charities, courts have cautioned that, while recognizing the “multifarious forms which acts of charity may assume,” (Eyring Research Institute v. Tax Comm’n, 598 P. 2d 1348, 1352 (Utah 1979)), ““the more remote the objects and methods become from the traditionally recognized objects and methods the more care must be taken to preserve sound principles and to avoid unwarranted exemptions from the burdens of government.”” Institute of Gas Technology v. Department of Revenue, 289 Ill. App. 3d 779, 787 (1st Dist. 1997) (citing Eyring Research Institute v. Tax Comm’n, *supra*). Thus, my legal analysis is made with this caution as applied to the guidelines in Methodist Old People’s Home v. Korzen, *supra*.

² There was testimony regarding a conference for which a fee was charged for participation concerning local news coverage of campaigns and elections. 1/16 tr. pp. 60-1, 70 (Auditor); App. Ex. 25. The applicant did research on the issues and presented the results at the conference. The witness testified that the fee was waived, it did not advertise that it would waive the fee, and that, in fact, it does not have a written fee waiver policy. 1/16 tr. p. 70. Fees that applicant gets for its services are not the primary sources of its income (App. Ex. 12) and, therefore, I can not conclude that the applicant places a financial barrier before anyone that wishes to take advantage of its activities.

There is no question but that applicant's primary concern is how government functions, and more specifically, it has as its core concentration the issue of the impact of money on politicians and government functions. App. Exs. 1 (brochure "Isn't it time voters mattered more than money?"), 2 (brochure "The Cost of Corruption"), 5 (booklet "Follow the Money: Tips on Researching Money & Politics in Illinois"), 11 (financial narrative tax year ending 6/30/05, ABC "received \$260,000 (60% of revenue) from Joyce Foundation in support of ongoing policy research, development, education, and advocacy activities focused on campaign finance and government ethics, judicial and media reform efforts"; "received \$30,000 from Piper Fund to support charitable and educational activities, focusing on non-partisan campaign finance reform"), 22 (media release "New Campaign Finance Disclosure Process Huge Success..." "the ABC is working to reform campaign finance laws in Illinois."), 24 (explaining the purpose and use of the Illinois Sunshine Database regarding sources of funding for candidates for Illinois state offices), 26 (printout of part of ABC website whereat, *inter alia*, brochures "Follow the Money", "Tainted Democracy" ("How money distorts the election process in Illinois and what must be done to reform the campaign finance system") and "Isn't it time voters mattered more than money?" are offered in PDF format), 27 ("Media Guide Third & Fifth Judicial Districts of the Illinois Appellate Court 2006 General Election" p. 10 (The Financing of Judicial Elections), pp. 11-13 (funding sources of the 2004 candidates for the Illinois Supreme Court), p. 14 (Independent Expenditure Campaigns), pp. 15-16 (Follow the Money)), 28 ("An Occasional Paper of the Paul Simon Public Policy Institute", September 2006, discussing, passim, the role of ABC in Illinois campaign finance reform legislation).

The result of applicant's primary focus is that ABC advocates "reforms to reduce the influence of money in politics and promote[s] integrity, accountability, transparency and public participation in government. ABC focuses its program efforts on campaign finance and ethics, judicial and media reform." App. Exs. 27, p. 21; 16, p. 5 ("The objective of [ABC's] Core Program is to educate the public, the press and policy makers about the role of money in politics, and promote good government by formulating reform models that address state campaign [sic] finance and ethics issues."). ABC claims that it achieves its goals primarily by researching campaign finance issues and advocating reforms to the existing laws regarding campaign finance and political ethics and making its research available to the public. App. Ex. 16 (Financial Statements Year Ended June 30, 2005) (Form AG990-IL, year ending 6/30/05, V-Charitable Program Description (3 Highest by \$ Expended): Public Education-Campaign Finance/Election Ethics Issue; Research II Judicial Elections & Independence Issues; Research on Media Coverage of Elections & Campaigns); 1/16 tr. pp. 16-17, 64 (Auditor)). Proceeding on the basis that these are applicant's primary purposes and methods of executing those purposes, I cannot conclude that these are activities that qualify applicant as a charity for ROT and UT tax exemption purposes.

One of the Korzen guidelines is that the benefits are derived for an indefinite number of persons persuading them to an educational or religious conviction, for their general welfare,-or in some ways reduces the burdens on government. Methodist Old People's Home v. Korzen, supra at 157 (citing Crerar v. Williams, 145 Ill. 625, 643 (1893) (defining charity, in a legal sense, "as a gift to be applied, consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their

hearts under the influence of education, religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government”)). As the applicant argues that it wants to raise the awareness of and to educate the public as to the realities of political campaign financing, the evidence provides that it makes general and candidate-specific campaign finance information available to the public through research that it amasses from various public sources which it then organizes. It is conceded that the applicant receives some money for its research activities, i.e. from on-going contracts with the University of Illinois at Springfield, for the Sunshine Project database.³ 1/16 tr. pp. 35-6 (Auditor). For the most part, however, applicant provides the data it collects at no charge to any group or individual that requests it. The question raised is whether the service of collecting, organizing and providing data primarily on political finances is a charity, in the legal sense. I determine that it is not.

The applicant emphasized that its primary services, of collecting, organizing and providing data on political finances and reform issues associated therewith, relieve a burden of government. Applicant offers that by its services, it is:

making sure that the government is operating in an efficient and effective manner, and that it enjoys the support of the public. If the public doesn't believe that the government is representing it, then we've got a very serious problem that has nothing to do with tax exemptions. And our work tries to make sure that the principles of good government are present at every level of the government, from the legislature to the executive to the judicial branch, to make sure that the public address is always at the forefront of every action that the government undertakes and that

³ Provides an on-line, free “database of campaign contributions and expenditures for constitutional officers for the State of Illinois, the General Assembly, state judicial members of the state judiciary and key committees based on semi-annual reports filed with the Illinois State Board of Elections.” 1/16 tr. p. 36 (Auditor). The database is accessible through the applicant's website. Id. at 38 (Auditor).

private individuals aren't benefiting from their positions in the government.

1/16 tr. pp. 12-13 (opening statement). It does this in a number of ways, including: 1) collaborating with the University of Illinois in placing campaign finance information on a free computer-accessed database (1/16 tr. pp. 39-44); 2) working with legislators or a constitutional office holder doing research on issues of government ethics or campaign finance (1/16 tr. pp. 51, 55-6); and 3) doing research on these issues for any member of the public (1/16 tr. p. 55).

As evidenced by various laws, Illinois has a policy in favor of open government free from the negative effects that money may have on political campaigns and political office holders. For example, the State Officials and Employees Ethics Act, 5 **ILCS** 430/1-1 et seq., prohibits, inter alia, certain political activities by state employees during state-compensated time (id. at 430/5-15), prohibits officers and state employees from soliciting or accepting any gifts from prohibited sources (i.e. one that seeks to do business with the officer) (id. at 430/10), prohibits an officer or employee of the executive or legislative branch or any candidate therefore from promising anything of value related to state government in exchange for financial support (id. at 430/5-30), establishes a State Executive Ethics Commission to conduct hearings on matters brought before it by the Inspector General (id. at 430/20-5) that is to investigate complaints of violations of the act (id. at 430/20-50) and mandates that the Inspector General and the Attorney General release quarterly reports of the number of complaints received and acted upon and, if there is a finding of an ethics violation, the record of the complaint and recommendation are to be released for public access (id. at 430/20-95). In addition, the Illinois Governmental Ethics Act, 5 **ILCS** 420/1-101 et seq., requires that elected office holders

and certain state employees, amongst others, file specific statements of economic interest with the Secretary of State (id. at 420/4A-101, 102, 103) with these documents available at all reasonable times to the public for inspection and copying (id. at 420/4A-106); the Freedom of Information Act, 5 **ILCS** 140/1 et seq., establishes the right of people to obtain government information; the Open Meetings Act, 5 **ILCS** 120/2 et seq., requires that the meetings of governmental bodies be open to the public; the Lobbyist Registration Act, 25 **ILCS** 170/1 et seq., requires certain persons who undertake to influence any official of the executive or legislative branch of the Illinois government for executive, legislative or administrative action, to register with the Secretary of State; and, article 9 of the Election Code, 10 **ILCS** 5/9-1 et seq., mandates, among other things, that any person who seeks nomination to or retention of a public office file detailed financial reports with the State Board of Elections that shall make the information available for public examination.

ABC fully acknowledges that it conducts its research and compiles the information it provides to the public using the public records of the state agencies and offices that are the statutorily mandated repositories of the campaign and ethics filings. It advises the public, in its own brochures and on its own website, of the locations, including public-access websites, of the public agencies and offices that are its information sources. App. Exs. 2 (“Who to contact for more information”); 5 (pamphlet providing “Website Resources”, “Research Tools”, “Other Government Offices” and “Other Useful Sites”); 27 (booklet pp. 19-20 “Resources”). Thus, the government is actually providing applicant with all of the information applicant uses to distribute to the public, which the applicant then configures into what it, itself, suggests is a more user-

friendly format. 1/16 tr. pp. 41-4. However, each governmental office that is mandated by law to receive, keep and make public campaign and other public officer and employee information is still required by law to do so. In fact, applicant acknowledges that its publication of information regarding campaign finances is not as timely as that of the State Board of Elections publication of that same information. Applicant Ex. 24 (About Sunshine Database) (“The Sunshine Database is updated twice a year. It is possible that a political committee filed an amended disclosure report changing the date, amount, or donor’s name related to a contribution. In that instance, the Sunshine Database would not reflect the more up-to-date information on the State Board of Elections’ website.”)). Therefore, while I cannot conclude that there is no benefit to the public from applicant’s compilation and publication of campaign finance information, I cannot conclude that the government is not performing the same service through perfectly adequate means as it is required to do by various laws. Similarly, applicant does not relieve the government’s burden of making government operations more transparent (1/16 tr. p. 65) as the government remains legally responsible for providing to the public the same information that applicant provides. Consequently, applicant has not relieved the government of any burden that it has. Nor is the public interest served better by ABC through its activities of making campaign finance information public, again, because the government already does the exact same thing. Nonetheless, these factors, standing alone, may not necessarily disqualify this applicant from qualifying as a charity for Illinois tax exemption purposes. Friends of Israeli Defense Forces v. Department of Revenue, 315 Ill. App. 3d 298 (1st Dist. 2000).

The serious concerns arise because ABC's activities are not limited to simply researching already public information and making it available to elected officials and to the public at no charge. Whereas the applicant throughout the proceedings professed that it was primarily a research organization (see e.g. 1/16 tr. pp. 61-2 (Auditor), 4/9 tr. pp. 31, 74, 78, 80, 82), with a goal to educate the public and elected officials regarding campaign finances, the record supports a conclusion that ABC's activities go well beyond these functions. It is these other purposes and functions that raise a serious concern that, in fact, ABC does not qualify as a charity, in the legal sense, for the purpose of pertinent Illinois tax exemption.

ABC has received federal tax exempt status pursuant to section 501(c)(3) of the Internal Revenue Code, 26 U.S.C.A. § 501(c)(3) ("IRC"). This fact, in and of itself, does not result in a determination that applicant's request for the tax exemption at issue must be obliged as Illinois courts have stated that a grant of this federal tax exemption is not determinative of whether an entity qualifies for Illinois tax exempt status as a charity. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450 (1970); Institute of Gas Technology v. Department of Revenue, 289 Ill. App. 3d 779, 785 (1st Dist. 1997).

However, that does not mean that the pertinent federal provisions can not be examined for guidance. IRC § 501(c)(3) provides federal tax exempt status to:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or

individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

IRC § 501(h) allows an entity to maintain its 501(c)(3) federal tax exemption even though the organization carries on propaganda or otherwise attempts to influence legislation as long as its expenditures for these activities are below IRC established amounts. Specifically §501(h) denies exemption status if “a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally” makes lobbying or grass roots expenditures in excess of ceiling amounts for each taxable year.

In addition, I.R.C. regulation, §1.501(c)(3)-1(c)(3), specifies that an organization is not operated for one or more exempt purposes if it is an “action organization” with an “action organization” regarded as attempting to influence legislation if the organization “(a) [C]ontacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or (b) [A]dvocates the adoption or rejection of legislation. 26 C.F.R. §1.501(c)(3)-1(c)(3)(ii)(a)(b). Further, an organization is an action organization if it has two characteristics: (a) its primary objective(s) may be attained only by legislation or a defeat of proposed legislation; and (b) it advocates or campaigns for the achievement of such objective(s), “as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public.” *Id.* at § 1.501(c)(3)-1(c)(3)(iv).

The issue in this instant matter is not whether this applicant is correctly designated as an I.R.C. §501(c)(3) organization. That is an issue between the Internal

Revenue Service and this applicant. Reference and guidance is sought from federal revenue codes and regulations because the federal government has attempted to distinguish between those entities that squarely fall into a category as being exclusively charitable in function and form while recognizing the “multifarious forms which acts of charity assume”. Eyring Research Institute v. Tax Comm’n, 598 P. 2d 1348, 1352 (Utah 1979); *compare* Rev. Rul. 70-79, 1970-1 C.B. 127 (determination that a nonprofit organization that assisted local governments of a metropolitan area by conducting research to develop solutions for common regional problems, but not advocating any legislative action to implement its findings qualifies for exemption under §501(c)(3)) (“Since the organization does not advocate the adoption of any legislation or legislative action to implement these findings, it is not an ‘action’ organization as defined in the regulations.”)) *with* Kuper v. Commissioner of Internal Revenue, 332 F. 2d 562 (3rd Cir. 1964) (did not allow a charitable tax deduction for money donated to a League of Women Voters chapter. Court determined that “a very substantial portion [of women’s time] was spent in formulation, discussing and agreeing upon the positions, if any, to be taken with respect to advocating or opposing various legislative measures. ...” “The activities in question are an essential part of the general legislative program of the League to promote desirable governmental policies through legislation, direct political action being the end product.” *id.* at 562-3); Seasongood v. Commissioner of Internal Revenue, 227 F. 2d 907 (6th Cir. 1955) (recognizing that “organizations formed for purely educational or charitable purposes may, in the course of their existence, as an instance of their activities, be forced to take part in some political activity. Only when such activities constitute a substantial part of their general activity is the [tax deduction] provision of this section

withheld. If, however, a substantial part of the organization's activities is political in character, as contrasted with purely religious, educational or charitable, it does not suffice to show that such activities were carried on with the highest motives and admittedly in the public interest." *id.* at 911); Slee v. Commissioner of Internal Revenue, 42 F. 2d 184 (2nd Cir. 1930) (denied income tax deduction for donation to the American Birth Control League that, *inter alia*, directed "persons how best to prepare proposals for changes in the law, and in distributing leaflets to legislators and others recommending such changes, chiefly by bringing before them such information as is supposed to 'enlighten' their minds. These suggest and advocate a relaxation in existing restraints [effecting the lawful repeal and amendment of state and federal statutes which deal with the prevention of conception]." *id.* at 184).

And, this is precisely what causes the greatest concern as to whether this applicant is a charity, in the legal sense, for purposes of Illinois tax exemption. ABC acknowledges that it does conduct some activity that is not amenable to the 501(c)(3) qualification, however, it provides that its otherwise disqualifying activities are within the monetary ceilings established by the IRC. IRC §501(h). It advises, and the record shows, that it reports lobbying expenses on its federal 990 tax return (Applicant Ex. 12, tax year ending 6/30/05, schedule A Part VI-B g, Lobbying Activity by Nonelecting Public Charities, Direct contact with legislators, their staffs, government officials, or a legislative body, \$2,295). On the same federal return, applicant provides a description of its lobbying activities as "[T]HE EXECUTIVE DIRECTOR MET WITH STATE LEGISLATORS ABOUT ELECTION REFORM LEGISLATION AND PUBLIC

FINANCING FOR JUDICIAL CAMPAIGNS.” Id. at statement 6, schedule A, part VI-B, Line 1, Descriptions of the Lobbying activities.

The initial problem is that applicant did not provide anything in the record to corroborate how it determined that its expenditures for lobbying activities was but .5% of its total income of \$444,231 for the tax year ending 6/30/05 as the applicant’s presentation at this hearing of its “lobbying” activities was in general rather than specific terms.⁴ For instance, does the \$2,295 expenditure represent traveling expenses for specific legislation advocacy and lobbying purposes or does it also include compensation paid to employees who work on the research and compilation made for Smith’s lobbying presentations? In other words, there is nothing in this record to allow an understanding of how applicant categorizes its various activities viz a viz “spearheading” campaign finance and government ethics legislation and the straightforward researching and reporting of data relating to these issues. Unfortunately, the record does not provide any means to clearly and convincingly distinguish between what might be considered applicant’s permitted IRC §501(c)(3)charitable-type activities from those activities that clearly are not.

To illustrate, Applicant Ex. 28 details the history of campaign finance reform in Illinois. In sum, ABC emerged from the Illinois Campaign Finance Project (“Project”), with then-retired Senator Paul Simon co-chairing the newly incorporated ABC’s steering committee with Lt. Gov. Bob Kustra. Id. at 9; Applicant Ex. 1 (identifying Kustra as an ABC Co-Founder). The Project was launched by the Institute for Public Affairs at the University of Illinois at Springfield, with then-U.S. Senator Paul Simon (Democrat) and former Governor William Stratton (Republican) as co-chairs of that

⁴ \$2,295 ÷ \$444,231=.005

steering committee (id. at 5-7, 9). The purpose of the Project was to research the sources of and expenditures of campaign funds for legislative candidates. Id. The Project resulted in 19 recommendations on campaign finance reforms that were submitted to the legislature and to Governor Jim Edgar. Id. at 6. Most of the recommendations made have become part of Illinois law. Id. However, six of the recommendations, all dealing with campaign contribution limits, had not been enacted as of September, 2006. Id.

There is no mistake that the very issues of campaign finance reforms and corresponding ethics reforms are political in nature, in that they are concerned with the effect of money on politicians and the way that government operates. There is also no question but that to have effective campaign finance and ethics changes, the legislative process must be involved, and that necessitates the direct involvement of politicians, that is, politicians are the ones that introduce and vote on such pertinent legislation that result in laws. See Applicant Ex. 28, passim. Those involved in the Project actively interacted with politicians for the very purpose of effectuating legislative changes. Id.

Not only are the issues of campaign finance and corresponding ethics reform fundamentally political in nature, they are clearly controversial issues for which agreement is certainly not a given. For example, the issue of campaign contribution limitations, a position openly and widely advocated by this applicant as well as its organizational predecessor (Applicant Ex. 2 (“An Ethics Reform⁵ Agenda for Illinois” ...“Limit the role of money in politics,” to, inter alia, contributions of \$2500 per election)); Applicant Ex. 12 (Form 990, Part III, Program Service Accomplishments: ...

⁵ Applicant’s references, including in its publications, of campaign finance and government ethics reform advocate a definite political position as the word “reform” is defined as: 1) amendment of what is defective, vicious, corrupt, or depraved and 2) a removal or correction of an abuse, a wrong, or errors. <http://mw1.merriam-webster.com/dictionary/reform>.

“Our goals are...to remove large private contributions from Illinois politics... .”)) has yet to find enough legislative support to cause enactment of laws in Illinois establishing them. Applicant Exs. 28, p. 20 (“Unquestionably, some Illinois leaders and some media oppose contribution limits for political or philosophical reasons, while others in Illinois believe Illinois will never have major campaign finance reform until it enacts contribution limits.”); 1/16 tr. pp. 68-9 (Auditor) (ABC “advocating a single source of \$2,500 per election; “advocating limitations on committee transfers up to \$10,000 per election”; “advocating public funding for judicial elections in the appointment of judges.”).

Applicant’s evidence also provides that its activities go well beyond basic neutral advocacy for government reforms, but, rather, that applicant actually drafts and “spearheads”⁶ specific legislation. As an example, “ABC is working to reform campaign finance laws in Illinois.” App. Ex. 22 (press release). Also, ABC’s direct involvement with legislation addressing the political and ethical reform issues of eligibility for state contracts and jobs, the favoring of tightening restrictions on gifts and donations to public officials and state employees’ potential conflicts of interest is illustrated by the acknowledgment that “[I]n 2003, we [ABC] started with a draft piece of legislation that was produced in this office... ” (Applicant Ex. 28 p. 17 (quoting Smith)) that evolved into the State Officials and Employees Ethics Act of 2003, the enactment of which required bi-partisan cooperation through various versions and amendments and reconsideration by the legislature following an amendatory veto by Governor Blagojevich. *Id.*; Applicant Exs. 6 (“Recent legislative accomplishments include

⁶ “Spearhead” is defined as “a leading element, force, or influence in an undertaking or development”. <http://m-w1.merriam-webster.com/dictionary/spearhead>

spearheading the 1998 Gift Ban legislation, 2003 Ethics Reform Act and the 2005 Election Reform Act.” “ABC works with an extensive network of civic, civil rights, labor, business, non-profit, academic and political organizations, which meets two or three times each year to discuss public policy issues, identify common program areas and initiatives.”); 1 (“In Illinois, money controls the political process. Power is concentrated at the tip-the four party leaders in the Senate and the House control much of the money raised, and funnel it toward the candidates of their choice. Independent candidates can’t compete and bills can’t be heard in Springfield without the approval of the so-called ‘four tops.’ In fact, if your legislators aren’t among the ‘four tops,’ they may have a hard time being heard in Springfield.”...“Change Politics as Usual; Become Part of the ABC!!!...We are organizing everyday citizens and representatives from the business, religious, labor, environment, and good government communities to help citizens reclaim Illinois’ government”). There is nothing in the record to suggest that the 2003 draft legislation produced by the applicant was for a specific legislator or office holder and was merely a compilation of facts, as applicant might claim, 1/16 tr. passim, nor that applicant’s involvement ended with the presentation of facts, only, regarding its legislation to legislators. In addition, applicant admits that it currently is working with the Illinois Treasurer and Comptroller on an “initiative to regulate pay to play. So pay to play is loosely the requirement that a potential bidder on a government contract would have to give a campaign contribution.” 4/9 tr. p. 9. Applicant “has put together a number of proposals to really put together a comprehensive package for that legislator to enact a program that would divide out the public interest from the private interest in terms of pay-to-play contract awarding.” Id. at 10-11.

I also assess these statements and factors in light of the testimony regarding the prominence of ABC's executive director, Ms. Smith. Smith has held her position since 1997. Applicant stresses her expertise on the issues of "government reform", "campaign finance reform", and "judicial election" and that she is considered by "members of all parties to be an expert in these areas." 1/16 tr. pp. 53-4. Applicant offered evidence in support of Smith's renown in these areas. For example, it was testified to that she "is often contacted by transition teams for reelected officials or task forces to serve as the representative with regards to issues of government reform, campaign finance reform, judicial election..." (*id.* at 53); that she currently served "on the current governor's first transition team" (*id.* at 54) and following her service on the transition team, "there was a comprehensive, a package of proposed legislation that was put forth, that was put out into the public." *Id.* In addition, Smith gave a speech "on elimination and addressing public corruption" at the National Association of Attorneys General conference (1/16 tr. p. 24; App. Exs. 20, 29 ("ABC Director, Ms. Smith, recently spoke at a conference of the National Association of Attorneys General on the subject of combating corruption in state government. After highlighting the problems and the causes of corruption, she provided a number of proposals that could be implemented by the Attorneys General which could have an impact in this area.")) and made a presentation at the ABA Coalition for Justice Roundtable Program on "Pruning Politics from the Judicial Branch", whereat she made "comments on the issues confronted in the judicial selection process..." App. Ex. 18; see also 4/9 tr. pp. 69-70 (regarding requests by legislators concerning creating laws on campaign finance or ethics, where ABC will do research for the legislators, "draft up" the

legislation wanted, and, Smith has testified on such proposed legislation identifying the problem, the proposed solution and how the proposed legislative solution would work).

Based on the totality of the evidence, ABC is neither subtle nor neutral in its presentation of facts relating to the issues of most concern to it, that is, campaign finance and government ethics reforms. Quite the contrary, the evidence supports a conclusion that ABC is very pro-active in publicizing its “reform” positions on these matters. Thus, I cannot accept any notion that ABC was and is not seriously and extensively involved in advocating or lobbying directly to members of the legislature the items it specifically proposes through its publications and its draft legislation or other “spearheaded” legislation that begin the political/legislative process necessary to culminate in laws.

Each party discussed what it believed to be legal precedence for its position. In Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987) and in Institute of Gas Technology v. Department of Revenue, 289 Ill. App. 3d 779 (1st Dist. 1997) the courts addressed whether entities that engaged in specific research qualified for tax exemptions as charities under Illinois law.⁷ In each case, the exemption was denied. The applicant in Gas Research was a not-for-profit company that got its funding from a federally authorized surcharge on interstate pipeline transfers. Its stated purpose was the “funding, encouraging, and conducting research and development of natural gas resources and uses.” Gas Research Institute v. Department of Revenue, *supra* at 432. Using the Korzen factors as guidelines within the context of the general proposition that “[T]he charitable purpose of the qualifying entity is represented by actions, consistent with existing law, undertaken for the benefit of an indefinite number

⁷ In Gas Research Institute v. Department of Revenue the entity sought a sales tax exemption number, and in Institute of Gas Technology v. Department of Revenue, a property tax exemption was at issue. The legal analysis was based on the same criteria in each.

of persons, for the general welfare or which in some way reduce the burdens of government” (Gas Research Institute v. Department of Revenue, *supra* at 435), the court determined that the Department’s finding, that any public benefit from that entity’s research on the development of natural gas resources and uses was incidental to the primary purpose of enhancing the position of natural gas in the energy marketplace, was not against the manifest weight of the evidence. *Id.* at 436.

In the instant matter, ABC researches and provides information to the public that is already in the public domain and works with legislators and elected officials to effectuate campaign finance and related ethics “reforms”. It does this using funding it receives primarily from foundations that have as their purposes strong support for campaign finance and government reform. Applicant Exs. 12 (Joyce Foundation) (supports “efforts to reform the system of financing election campaigns” through its Money and Politics Program that “promotes these ends through support for federal-and state-level initiatives that combine policy research and advocacy, public and policy-maker education...and participation in official proceedings, including litigation.”); 13 (Piper Fund) (“comprehensive campaign finance reform is a cornerstone in the struggle to redeem and enlarge our democracy” using its funding to achieve “pioneering reform” and “plays a prominent role in the campaign finance reform movement. The resulting breakthroughs at the state level hold forth the promise of opening up campaigns to new and diverse voices and to altering the country’s political equation on almost every substantive issue that matters in people’s lives.”); 14 (Open Society Institute) (“aims to shape public policy”).

No one will make a serious argument that the public does not want elected officials to govern based on anything other than the best interests of all their constituents. Nonetheless, the fact remains that ABC's basic agenda, that is, campaign finance and government ethics reforms, are not universally supported. Thus, whereas the primary benefit of the work done by Gas Research went to a specific industry, with the public being a secondary beneficiary, the primary benefits of ABC's work can be seen to be those foundations and persons that believe in the specific reforms that ABC advocates and the corresponding pertinent legislation that it spearheads. Certainly the record in this matter does not clearly and convincingly disprove these notions.

In the Institute of Gas Technology case, the court again looked at a not-for-profit company that conducted research and education in the energy and environmental fields. Institute of Gas Technology v. Department of Revenue, *supra* at 780. The court also looked at the Korzen factors as guidelines (*id.* at 784) and extended its analysis using similar cases decided in Minnesota (North Star Research Institute v. County of Hennepin, 306 Minn. 1), and in Utah (Eyring Research Institute v. Tax Comm'n, 598 P. 2d 1348) as persuasive but not binding. *Id.* at 787. Following its examination of the facts in the other cases, the court stated that “[T]he most prominent factors to be gleaned from the cases relative to evaluating research institutes in the context of charitable exemptions are: (1) is the institute's research available to the public; and (2) who directly benefits from the institute's research efforts, taking into consideration the ability of the research to reduce governmental burdens and the remoteness of the nature of the research from traditional notions of charities.” *Id.* at 787-8. Using these factors, it is again of import that while ABC makes its research available to the public for no charge, the research and

compilations are of information that is already available to the public free of charge by the government, itself. Thus, no governmental burden is reduced at all. Also, because the acknowledged primary purpose of the applicant herein is to bring about campaign finance reforms with very specific legislative objectives, it cannot be concluded that the applicant operates as a charity, in the legal sense, as articulated in Crerar v. Williams, supra. Again, promoting specific campaign finance reforms and spearheading specific campaign finance and ethics “reforms”, that are not necessarily agreed to by the legislators and elected officials that represent the citizens of Illinois, goes well beyond traditional notions of charity. In fact, one might conclude that what applicant primarily does is engage in basic politics albeit with bi-partisan political support. Unfortunately, this record does not clearly and convincingly provide for a different conclusion.⁸

The applicant also raises several Illinois court cases and Department administrative decisions in support of its position. In the “ABC Coalition” matter, ST 02-33, the administrative law judge recommended a sales tax exemption number for a not-

⁸ The following cases are also of interest but do not have precedential value in this cause for a number of reasons including that they involve IRC provisions: Kuper v. Commissioner of Internal Revenue, 332 F. 2d 562 (3rd Cir. 1964) (did not allow a charitable tax deduction for money donated to a League of Women Voters chapter. Court determined that “a very substantial portion [of women’s time] was spent in formulation, discussing and agreeing upon the positions, if any, to be taken with respect to advocating or opposing various legislative measures. . . .” “The activities in question are an essential part of the general legislative program of the League to promote desirable governmental policies through legislation, direct political action being the end product.” id. at 562-3); Seasongood v. Commissioner of Internal Revenue, 227 F. 2d 907 (6th Cir. 1955), (recognizing that “organizations formed for purely educational or charitable purposes may, in the course of their existence, as an instance of their activities, be forced to take part in some political activity. Only when such activities constitute a substantial part of their general activity is the [tax deduction] provision of this section withheld. If, however, a substantial part of the organization’s activities is political in character, as contrasted with purely religious, educational or charitable, it does not suffice to show that such activities were carried on with the highest motives and admittedly in the public interest.” id. at 911); Slee v. Commissioner of Internal Revenue, 42 F. 2d 184 (2nd Cir. 1930) (denied income tax deduction for donation to the American Birth Control League that, *inter alia*, directed “persons how best to prepare proposals for changes in the law, and in distributing leaflets to legislators and others recommending such changes, chiefly by bringing before them such information as is supposed to ‘enlighten’ their minds. These suggest and advocate a relaxation in existing restraints [effecting the lawful repeal and amendment of state and federal statutes which deal with the prevention of conception].”) Id. at 184.

for-profit Illinois corporation with 501(c)(3) status that operated to “research and develop innovative proposals to preserve and expand affordable housing, advocating for greater coordination and increased funding from all levels of government and the private sector for housing which meets the need of low-income individuals and families, and by promoting organizing efforts at the community and neighborhood level around affordable housing units.” Id. at Findings of Fact #3. ABC Coalition held training sessions and workshops on affordable housing and organizational issues (id. at Findings of Fact #6), published a manual on Tax Increment Financing (“TIF”) and held workshops and made presentations to educate the public about TIFs (id. at Findings of Fact #7, 8), and maintained a database of housing in Illinois that receives state or federal subsidy (id. at Findings of Fact #9). The alj determined that all of the Korzen guidelines were satisfied and made his recommendation that was adopted by the Director of the Department.

There are, however, major differences between that matter and the instant cause. First, ABC Coalition operated with the U.S. Secretary of Housing and Urban Development (“HUD”) to carry out the mandates of the National Affordable Housing Act, 42 U.S.C. 12704 et seq., to “develop the capacity of participating jurisdictions, State and local housing finance agencies, nonprofit organizations and for-profit corporations, working in partnership, to identify and meet needs for an increased supply of decent and affordable housing.” 42 U.S.C. 12781. In contrast, there is no federal or state law that specifically authorizes a federal or state agency to work on the local level with an entity such as ABC to carry out its mandate. Also, there is no indication that ABC Coalition worked to advocate, lobby for or spearhead legislation on the local level. In contrast, ABC, admittedly, carries out these types of activities, and while it professes that these

activities are within federal monetary limitations so as to maintain its 501(c)(3) status, the record in the instant matter is far from clear that these activities are not primary to ABC's operations.

Similarly, in "Margaritaville Community Development Corp.", ST 99-7, the alj recommended granting a sales tax exemption number to a not-for-profit corporation whose purposes included combating community deterioration and poverty and bringing relief to the poor, distressed and underprivileged in a particular community. Id. at Findings of Fact #3. It did this through two programs that: 1) provided entrepreneurial and job readiness training in support of national welfare-to-work programs, and, 2) provided an after-school program and various other activities for area at-risk youth. Id. at Findings of Fact #13, 14. Again, these programs did not involve political advocacy or lobbying activities, nor does the record reflect that this entity spearheaded legislation in furtherance of its purposes and activities.

The same is true for "ABC Corp.", ST 05-1, wherein an entity, whose sole purpose was to hold a Pro-Am golf tournament each year to raise money for breast cancer research, education and treatment. Id. at Findings of Fact #1. In marked distinction with ABC, this entity was not involved at all in lobbying or advocating for or spearheading legislation for cancer research. In addition, as with the other administrative decisions, the purpose of the entity seeking status as a charitable entity for Illinois tax exemption easily fit within the basis framework of what a charity is, in a legal sense, as articulated in Crerar v. Williams. The same cannot be concluded about ABC from this record.

The case of Friends of Israel Defense Forces v. Department of Revenue, 315 Ill. App. 3d 298 (1st Dist. 2000), is cited by the applicant to support its position that Illinois

gives an expansive interpretation to the meaning of charity emphasizing whether the end result of what the charity does benefits society at large. 4/9 tr. pp. 26-8. The applicant in that case was the American fund-raising branch of the Association for the Well-Being of the Israeli Soldiers (“Association”), an entity that was tax exempt under the Laws of the State of Israel. Friends of Israel Defense Forces v. Department of Revenue, *supra* at 299. It provided funds to the Association which, in turn, used all of the monies to provide rest and recreation centers for Israeli and American soldiers, for remedial education of Israelis and immigrants, scholarships for soldiers’ orphans and for soldiers, programs for wounded and disabled soldiers and for temporary housing for American soldiers and civilians made homeless by missile attacks during the Gulf War. *Id.* at 300-01, 305. After finding that all other Korzen guidelines were met, the court concluded that it was not fatal to that applicant’s claim that it did not reduce a burden of the Illinois government. Using language from Crerar v. Williams, the court stated that the Friends applicant applied “its resources for the benefit of an indefinite number of persons, persuading them to an education or religious conviction, for their general welfare.” *Id.* at 307.

What the applicant in Friends did not do was to advocate or lobby for any legislation, nor did it spearhead legislation for any political “reforms”, as does ABC. Thus, any reliance on the Friends case would be more appropriate for consideration if the record in this matter clearly and convincingly showed that ABC’s involvement with issues that are definitely political in nature was nothing more than unbiased reporting of fact rather than pro-active promotion for specific types of legislation. This record does

not, in fact, allow for such a determination. I determine, then, that ABC's reliance on Friends of Israeli Defense Forces v. Department of Revenue, *supra*, is misplaced.

All of the above analysis is not intended, by any means, to diminish ABC's efforts to alert the public and focus attention on how politics and government operate in Illinois. However laudable applicant's purposes are, good and sincere purpose does not, in and of itself, result in a legal determination that an entity is a charity. Rotary International v. Paschen, 14 Ill.2d 480, 488-9 (1958) ("It is firmly established in this State that the objects of a not-for-profit corporation may be commendable, yet not charitable." (citations omitted)). As discussed above, tax exemption is the exception and not the rule, and statutes providing exemptions must be strictly construed in favor of taxation. This is, in no small part, because each grant of exemption deprives the entire community and the State of funds needed to provide necessary services to everyone. This applicant has failed to clearly and convincingly prove that it is organized and operated "exclusively" for charitable purposes. Rather, it is an organization that functions primarily to convince people of the need for government "reform" that must be effectuated through the political system, and the applicant operates within that system to move its particular agenda forward. This is well beyond even the most expansive understanding of what charity, in a legal sense, is, for tax exemption purposes in Illinois.

Wherefore, for the reasons stated above, it is recommended that the Department's denial of ABC's application for a tax exemption number be affirmed.

Date: 7/30/2007

Mimi Brin
Administrative Law Judge