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GUENTHER & JORDAN
ATTORNEYS AT LAW
THIRD FLOOR, NASHVILLE CITYBANK BUILDING
315 UNION STREET
NASHVILLE, TENNESSEE 37201

JAMES P. GUENTHER
JAMES D. JORDAN

TELEPHONE
(615) 254-1207

October 29, 1985

Mr. William H. Thomas
Regional Director
United States Department of Education
Region IV
101 Marietta Tower
Atlanta, Georgia 30323

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U.S. DEPT. OF ED.
OFFICE FOR CIVIL RIGHTS
REGION IV

Dear Mr. Thomas:

We are legal counsel to Belmont College. On March 25, 1985, you directed a letter to Dr. William E. Troutt in which you acknowledge that Belmont College filed a request for exemption from Title IX of the Education Amendments of 1972. Belmont's request was dated February 16, 1979.

Now, in response to your request for further information, we submit the following.

1. Belmont College is controlled by the Tennessee Baptist Convention. The Tennessee Baptist Convention is composed of messengers from cooperating Baptist churches in this state. The Convention promotes the "evangelistic, educational, missionary, benevolent, and other interests of Tennessee Baptists and cooperates in promoting such objectives fostered by Baptists through the Southern Baptist Convention as it deems proper." (Article 3, Constitution, Tennessee Baptist Convention.)

The members of the Board of Trustees of Belmont College are elected by the Convention. The Convention determines the number of trustees, has the power to fix the term of office, prescribes their qualifications, and provides the manner of filling vacancies. The Convention requires that trustees must be resident members of Baptist churches affiliated with the Tennessee Baptist Convention. The Tennessee Baptist Convention may declare the office of a trustee vacant and elect a successor to fill the unexpired term of the office declared vacant. The Convention decrees that all trustees who leave the state automatically vacate their position on the Board. The Convention prohibits Belmont College from incurring

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indebtedness for current operations or capital needs without the prior approval of the Convention in session or, in the interim, of the Executive Board of the Convention. The Convention does not permit the college to engage in any campaign to raise funds without prior approval of the Convention in session or, in the interim, the Executive Board of the Convention. The Convention requires Belmont College to conform to the policies and programs of the Convention. The Convention requires that the directors make detailed reports of operations, programs, and finances for inclusion in the Book of Reports at the annual session of the Convention and at other times if requested by the Tennessee Baptist Convention Executive Board. The Convention has required the trustees of Belmont College to periodically review the charter of the college and bring it into conformity with the policies of the Tennessee Baptist Convention.

The Convention significantly contributes to the financial needs of the college. The Convention has authorized the withholding of these designated funds in the event the college acts in violation of provisions contained in the Convention's constitution and bylaws, policies, or programs. The Executive Secretary-treasurer of the Convention's Executive Board serves as an ex-officio member of the Board of Trustees of the college. Belmont College is required to operate according to a "program statement" adopted by the Tennessee Baptist Convention.

The college is required to function in compliance with a financial policy manual established by the Tennessee Baptist Convention which establishes procedures for budget requests from the college to the Convention, the submission of audits by the college to the Convention, accounting standards for designated gifts and trust funds, and the filing by the college of a report of indebtedness and liabilities of the college along with other annual financial information. The Convention specifies bonding requirements and restricts the college from expansions or enlargements in its educational programs without prior approval of the appropriate committees and of the Executive Board of the Convention.

2. The religious tenets of the controlling organization are those commonly held by Southern Baptists as Dean Kelley set forth in his February 16, 1979, letter. The Baptist Faith and Message sets forth the sense of a common core of these religious tenets. The college does not discriminate in its insistence on Christian sexual conduct on the part of its faculty, administration, and student body. These rules are applicable without regard to gender. I refer you to Dean Kelley's elaborations on these tenets set forth in his February 16, 1979, letter and to the specific elaborations below.

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I also enclose a copy of the Baptist Faith and Message.

3. Belmont College requests an exemption from the following sections of the Title IX regulations which we believe may be interpreted in conflict with religious tenets of the school.

§§ 106.21(c), 106.40, 106.57, 106.60(a), and 106.51(b)(6). Belmont College claims an exemption from these provisions in the regulations insofar as they might forbid the college from inquiring into and in taking action in those cases it deems necessary in regard to marital or parental status and in the pregnancy and termination of pregnancies of students and those seeking employment with the college. Belmont College's religious tenets do not permit the college to treat pregnancy, childbirth, or termination of pregnancy of an unmarried woman as a normal illness and a temporary disability.

§ 106.31. An exemption is requested to the extent the regulation covers membership practices in student organizations, and in the provision against discrimination "against any person in the application of any rules of appearance" (5). It may well be that Belmont College would determine on some occasion that its religious tenets should encourage membership practices in student organizations in which the organization was limited to one sex. This would grow out of the college's religious conviction that it should minister in unique ways in preparing its students to fulfill their roles as mothers and fathers all in the context of a religious belief in the sanctity of the home.

It is our understanding that 106.31(5) regarding appearance rules has been rescinded. If that is not the case, we would request an exemption from that provision because of the college's ethical and moral beliefs growing out of its tenets regarding appropriate dress which may vary from men to women as a result of sexual anatomical differences.

§ 106.36. An exemption is requested to the extent that the regulation affects counseling and the use of counseling and appraisal materials for the same reason set out above.

In summary, Belmont College champions the rights of its women students and employees. Its religious tenets cause the college to perceive men and women as equal creations of God. The basic concern out of which these requests for exemptions grow is that Belmont must operate in regard to its students and employees on the basis of its religious tenets even if these actions might be deemed in conflict with the regulations. Therefore, Belmont College is, by this request, undertaking to simply afford itself the exemption from Title IX regulations allowed at 45 C.F.R. 86.12 as a result of Congress's recognition of our First Amendment rights.

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We appreciate your understanding of our need and if we can be of further assistance, please advise us.

Sincerely,



James P. Guenther

JPG:jd

enclosure