



Brigham Young University - Hawaii Campus

Office of the President

September 11, 1997

Ms. Norma Cantu
Assistant Secretary for Civil Rights
United States Department of Education
400 Maryland Avenue SW
Washington, D. C. 20202

RE: Request for Religious Exemption from Title IX regulation: 34 CFR § 106.60

Dear Secretary Cantu:

The purpose of this letter is to provide the United States Department of Education with official notification that Brigham Young University—Hawaii Campus, located in Laie, Hawaii (hereinafter referred to as "BYUH" or "the University") considers itself exempt from the application of 34 CFR § 106.60, to the extent described in this correspondence, which regulations are also published pursuant to Title IX of the Education Amendments of 1972, 20 USC § 1681 et. seq., a federal statute prohibiting sex discrimination in educational programs. BYUH expressly requests the Department to recognize formally that BYUH is exempt from the application of this Section because its provisions are in conflict with religious teachings, tenets, and practices of The Church of Jesus Christ of Latter-day Saints (hereinafter sometimes referred to as "the Church" or "the LDS Church"), a religious organization which sponsors and controls BYUH.

In 1989, your office granted other BYUH requests for exemption from other sections of 34 CFR. Specifically, the University was "... exempted from the requirements of the following sections of the Title IX regulation: 34 CFR §§ 106.21(c), 106.31, 106.36, 106.39, 106.40, and 106.57." The basis for this exemption was "... that BYUH ... is controlled by the Church of Jesus Christ of Latter-day Saints (Church), and that BYUH practices the tenets of the Church and is owned and operated by the Church ... This relationship between the Church and BYUH adequately establishes that BYUH is controlled by a religious organization as is required for consideration for exemption under § 106.12 of the Title IX regulation." (OCR letter, May 18, 1989 to Dr. Alton L. Wade)

The LDS Church founded BYUH on February 12, 1955 and since that time the Church has been continuously and ultimately responsible for BYUH's operation. Until June 1974, BYUH was known as the Church College of Hawaii. The University's Board of Trustees consists of persons appointed by the governing board of the LDS church, and all of the Trustees are General Officers of the Church. Two-thirds of BYUH's operating budget is derived directly from appropriations from the Church. Additionally, the Board of Trustees not only sets hiring policy for the University but General Officers of the Church are directly involved in the hiring process for every full-time permanent faculty at the University.

The Church of Jesus Christ of Latter-day Saints is a major international Christian religion, having a fully developed theology, a well-known history spanning nearly two centuries, and a worldwide membership presently numbering approximately ten million. Its members believe that the Church and its doctrine contain the fullness of the Gospel of Jesus Christ, restored by direct revelation from God to Joseph Smith, who was called a prophet in the Biblical sense in 1820. The governing Board of the Church consists of a First Presidency of three, along with a Quorum of Twelve Apostles, all of whom are regarded by the Church

Membership as Apostles and Prophets.¹ While accepting the King James Version of the Bible as holy scripture, the Church also regards the Book of Mormon as another testament of Christ and as holy scripture. In addition, the Church also accepts prophetic writings as scripture and regards the teachings of current Church leaders as religious doctrine.

Within this general framework, and with specific reference to this request for an exemption, the Church teaches that the family unit is of basic theological significance and that the often independent roles of husbands and wives are fundamental elements of Church doctrine. Thus, the Church teaches that certain distinctions based on gender, particularly as they relate to matters of family life, are both natural and religiously significant. At the same time, the Church has a remarkable record of encouraging all of its members, male and female, to obtain as much education as possible and to participate fully in the communities in which they live.

Attached hereto as Exhibit "A" is a copy of an official pronouncement of the First Presidency and Quorum of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints dated September 23, 1995. This "Proclamation on the Family" makes the position of the Church with respect to the matters addressed in it abundantly clear and reaffirms certain family values and principles as Church doctrine, which is binding on the Church, its controlled organizations, like BYUH, and the Church membership. Please note the significant emphasis on the importance of family and the differing roles of men and women in the family.

It is for this reason that the University may from time to time make a pre-employment inquiry as to the marital and family status of an applicant for a teaching position at the University. The Church teaches and we believe that such information about marital and family status is relevant, combined with other factors, in assessing the extent of an applicant's religious conviction and commitment to Church doctrine and practice as we attempt to identify those most qualified to teach at BYUH. Naturally, questions about religious conviction will be wide-ranging and will include areas of inquiry about the support of Church leaders, morality, family life, and basic Church doctrine. The result of this broad inquiry will be that the University will have a better view as to whether the applicant has the necessary religious conviction and devotion to teach at BYUH. We emphasize that answers to questions about family are not, by themselves, dispositive in the employment decision. Rather, they are considered, together with the answers to other religiously oriented questions, in measuring the religious strength and commitment of the applicant to Church doctrine and practice.

While this application deals with an exemption for faculty who teach, it is also true that the General Officer interview is required for all new permanent faculty, even those without fixed teaching assignments. Accordingly, we request that an exemption be granted from § 106.60 of the Title IX regulation which extends to all new faculty hires at the University. Of course, at the heart of this analysis is the holding in Corporation of the Presiding Bishop vs Amos, 483 U.S. 327 (1987), which held that the religious exemptions of Title VII to the Civil Rights Act do not violate the establishment clause of the first amendment. Simply stated, Amos allows an institution like BYUH, one which is owned or controlled by a Church, to exercise a religious hiring preference. That principle, in turn, permits the University to employ Church members who meet certain minimum standards of faithfulness and wholehearted commitment to Church teachings.²

¹The First Presidency, as well as members of the Quorum of the Twelve Apostles, among others, make up the University's Board of Trustees.

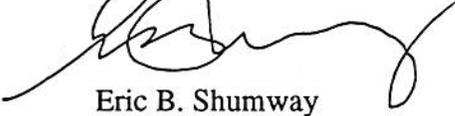
²Lawson v Kirkham, 499 F.Supp. 960, 965 (D. Utah 1980) establishes that the right of religiously affiliated institutions to prefer their own in hiring matters necessarily involves the right "to employ those who best promote [their] religious mission . . ."

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The University is a distinctive, religiously based institution with a serious commitment to the values, doctrines and mission of its sponsoring Church at the heart of its educational mission. Your prompt attention in evaluating this Notice will be greatly appreciated. If I, or any members of the University administration, can be of any assistance to you in completing your review, or if you require additional information, please contact me.

Most sincerely,



Eric B. Shumway
President

EBS:jt
Encl: