

Oregon Medical Marijuana Dispensary Denied Exempt Status

As I was reading the Nonprofit Law Professor Blog¹ the other day, looking for topics for this presentation, I stumbled upon an entry about an Oregon Medical Marijuana Dispensary being denied 501(c)(3) exempt status. I was curious about the reason for the denial and decided to read the letter² sent by the IRS informing the organization of their rejection. What I read sparked a stream of questions about the amount of power given to the IRS and the federal government in the nonprofit sector and became the focus of my presentation.

The denial letter concentrated on a couple of areas, but most importantly it stated that a charitable organization cannot be established for an illegal purpose. That seems obvious; however, in this case marijuana dispensaries *are* legal under Oregon law—they are just not legal yet under federal law. Because the IRS exemption is based on a Federal Act, federal law applies to the criteria. As we learned last week, an organization submits its articles and bylaws to the secretary of state for state approval. After that occurs, they submit the exemption application to the IRS. Even though the secretary of the specific state may approve an application, this does not change the fact that the federal exemption will not be granted if the mission is illegal under federal law.

This seems to defeat many of the functions of the charitable sector. As we have discussed, the nonprofit sector serves many valid and important purposes. My personal favorite is that nonprofits can fill the gaps between what the government is willing to do and what individuals are willing to do. Where a need is not being met and where a group of individuals are happy to meet that need, then the opportunity should be allowed. Similarly, where the

¹ <http://lawprofessors.typepad.com/nonprofit/page/3/>

² Available at <http://www.irs.gov/pub/irs-wd/1224036.pdf>

government is failing its people, an organization should not be barred from offering assistance simply because the federal government has not deemed such an action legal.

One of the cases mentioned in the IRS denial letter specifically referred to an organization focused on world peace, disarmament, and nonviolence being denied 501(c)(3) status because it was encouraging civil disobedience against laws and practices that violated the peace loving tenets associated with their organization³. This type of power seems like it has potential to paralyze an important piece of the nonprofit sector's mission. If plurality and innovation are limited to what the federal government legalizes then there is a great opportunity for silencing groups that want to challenge the government or accelerate social change.

As the book noted, the definition of charity has changed over time, but is usually understood to mean helping the poor, the disadvantaged, the marginalized—I cannot think of a more marginalized, disadvantaged group than one that is lawfully not allowed to be assisted. In this case, the IRS denied the right to exempt status to a group dedicated to helping people access their medicine. The 501(c)(3) application process seems to put all the power in the IRS' hands. It will be interesting to see how the medical marijuana issue evolves as more states adopt regulations and accept it as a valid public benefit. My hope is that cases are brought to push back against this structure and to grant more power to the states. Organizations intending to fill gaps where the government is failing should not have to rely on that same government to approve their decision and allow them to do their charitable work. Hopefully, some innovation and plurality will spring up within the IRS and some changes can occur around this antiquated policy.

Andrea Bibee

September 11, 2012

³ Rev. Rul. 75-384, 1975-2 C.B. 204