

AN EDUCATIONAL UPDATE FROM  
THE SOUTHEAST LAW INSTITUTE™, INC.

**To:** Interested Persons  
**Date:** May 2020  
**From:** A. Eric Johnston  
**Re:** Church Acceptance of Government Funds From the CARES Act and Related Laws

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The Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) is a program which provides financial assistance to 501(c)(3) organizations, including churches, with 500 or fewer employees. It includes a forgivable loan, the Paycheck Protection Program (“PPP”), to be used toward expenses when the organization is unable to meet them. Additionally, the Coronavirus Preparedness and Response Supplemental Appropriations Act (“CPRSA Act”) expands the Small Business Administration’s Economic Injury Disaster Loan Program (“EIDL”), which could be utilized by nonprofit organizations. The question is whether it is advisable for churches and other ministries who are experiencing a lull in contributions, due particularly to the inability to meet on a regular basis, which is a time that tithes are made, to request government assistance. This memo is an abbreviated version of a longer memo done for churches and is not meant to give legal advice. Contact us for additional information.

There is an axiom that religious liberty lawyers have always recognized that if you accept government funds, there will be strings. They are not always obvious and may not always be pulled, but the threat is there. The Trump Administration has been the most favorable administration to religious freedom in memory, while the Obama Administration had many restrictions on religious freedom in the application of federal programs. In other words, whether the strings are pulled may depend on the administration.

The most likely provision of the Act that churches will use is the PPP. This allows a loan to the church, as well as other entities, based on certain criteria, up to certain limits, which will be forgiven. Under the EIDL additional low interest loans may be obtained, which must be repaid. Because both of these programs will be administered by the SBA, it is likely existing and future SBA regulations contained in the Code of Federal Regulations (“CFR”) will apply. There is already within these regulations compromises on religious freedom.

By accepting PPP and EIDL loans, the church will most likely be considered a recipient of “federal financial assistance.” When this assistance is received, it usually subjects the recipient to other federal statutes, like Title VII, the Civil Rights Act of 1964, which has nondiscriminatory provisions which are presently applicable to churches. There are regulations which protect the church from discrimination claims for the hiring and requirements of clergy, but not for clerical and other employees. There is currently a case before the U.S. Supreme Court on whether the “sex” discrimination ban in that law covers sexual gender and sexual orientation. That was the position of the Obama Administration, but the Trump Administration is seeking to limit that application. Could churches be required to perform same-sex marriages? The point is, federal policies wax and wane depending on the administration and court decisions.

For Alabama churches, there could be more serious complications for their ministries. Even if the church has a PPP loan, or a EIDL loan and repays it, the fact that it took the federal assistance may subject it to Alabama laws. The most immediate problem may be for churches which operate daycare programs. In the 2017 and 2018 regular sessions of the Alabama Legislature, churches were required to forcefully defend themselves against attempts by the Department of Human Relations (“DHR”) to regulate those ministries. The main defense is that the churches do not receive any form of federal or state financial assistance. Under the present law, if a church receives federal or state financial assistance of any kind, including a PPP or EIDL loan, that could automatically remove the church daycare from the protection of the Alabama statute. See § 38-7-3(b)(2), 1975 *Code of Alabama*. The daycare would then be subject to all of the intrusive requirements of the Minimum Standards published by DHR.

Similarly, church schools as defined by Alabama law are insulated from state regulation, except for truancy reporting. Like the daycare law, statutes were passed in 1983 to protect these church ministries. However, in 2014, the Alabama State Department of Education once again attempted to assume complete regulation of schools grades K-12 operated by churches. Only by a Herculean effort were we able to defend the church schools by opposing the Department and having laws passed that added further protection for them. The important point is that churches do not receive governmental financial assistance for the operation of their schools. See, § 16-1-11.1(2), *id.*

Keep in mind this reasoning applies not only to the church, but its various ministries. For example, the church school or daycare operated by the church cannot borrow separately from the government. Such ministries are integral to the church to provide them the very protection we are discussing here.

We have recognized these issues through many years of litigation. The financial implications of the coronavirus are profound in all areas, including financial. This applies to both religious and non-religious entities and businesses alike. We must recognize also that this too will pass. If we commit to the government our allegiance by accepting its funds during this difficult time, we can very well expect the government to return, at some point in the future, with demands for our fealty.