

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION**

BY THE HAND CLUB FOR KIDS, NFP, INC.,)

Plaintiff,)

v.)

No. 2017 L 50886

ILLINOIS DEPARTMENT OF)

EMPLOYMENT SECURITY; DIRECTOR OF)

DEPARTMENT OF EMPLOYMENT)

SECURITY; BOARD OF REVIEW OF)

ILLINOIS DEPARTMENT OF)

EMPLOYMENT SECURITY; AND KIM E.)

WIMBERLY,)

Defendants.)

OPINION and ORDER

I. OPINION

This matter is before the court on Plaintiff, By the Hand Club for Kids’ (“Plaintiff”) Complaint for Judicial Review of Administrative Decision, filed with this court on October 5, 2017. This opinion and order follow.

Background

Plaintiff is an Illinois not-for-profit corporation that seeks to evangelize impoverished Chicago schoolchildren. Partnering with certain Chicago Public Schools, Plaintiff provides transportation from the school to their site. Once on site, Plaintiff gives each child a Bible and prayer instruction, and holds group and individual religious activities. Plaintiff uses an evangelistic curriculum called “Evangelism Explosion” to teach students about Christianity, takes the students on Christian field trips, plays Christian music, and keeps track of which students, and how many of the students, form a “personal and saving relationship” with Jesus. Plaintiff requires all of its staff and volunteers to be churchgoing Christians. Plaintiff also

provides hot meals, medical attention, and tutoring and homework help with particular emphasis on literacy. Plaintiff provides all of these services free of charge.

Donnita Travis founded Plaintiff in 1997, and remains its executive director. Plaintiff's name, "By the Hand" comes from a section of the Bible, John 10:10. John 10:10 has special meaning to Ms. Travis as she believes that God placed this verse before her in order to command her to lead poor children "by the hand" to Jesus. She partnered with The Moody Church, an organization whose own roots evangelizing Chicagoans date back to the days when Abraham Lincoln was campaigning in the city. Thomas M'Millen, "Abraham Lincoln Visits Moody's Sunday School - Church History", *The Moody Church Herald*, December 1, 1908, <http://old.moodychurch.org/150/teachings/abraham-lincoln-visits-moodys-sunday-school>.

In 2005, Ms. Travis and The Moody Church separately incorporated Plaintiff. They filed Articles of Incorporation as an Illinois Not for Profit with the Secretary of State of Illinois, obtained recognition from the IRS as a tax-exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code, and agreed to Bylaws stating that Plaintiff is "a Christ-centered, after school program that helps children have an abundant eternal life..." The Moody Church continued to exercise oversight over the program as it continued to grow to its current point, with an annual budget of approximately \$8,000,000 and hundreds of Chicago Public School students participating in its programs at any given time.

Defendant Kim Wimberly worked as Plaintiff's Human Resources Director and Volunteer Coordinator prior to leaving of her own accord in 2016 to look for work that had better "work/life balance." Her supervisor at the time, Marc Cole, tried unsuccessfully to dissuade her, going so far as to suggest that they might increase her compensation.

After Ms. Wimberly left, she applied for unemployment compensation. Plaintiff protested, arguing first that Ms. Wimberly had left voluntarily and was therefore not entitled to

receive unemployment compensation, and second that as a religious organization, it was exempt from having to pay unemployment taxes pursuant to section 211.3A (2) of the Illinois Unemployment Insurance Act (the “Act”).

The Illinois Department of Employment Security (the “Department”) held a hearing before Referee Ronald Rodgers (the “Referee”) on March 14, 2017. Ruling only on the issue of Plaintiff’s religious exemption, the Referee found that Plaintiff was not exempt. Plaintiff timely appealed the Referee’s decision to the Department’s Board of Review (the “Board”). The Board affirmed the Referee’s decision, finding that because Plaintiff provided literacy help, free hot meals, and medical attention, Plaintiff was essentially an after school program and therefore not entitled to the religious exemption under the Act. Plaintiff filed the instant complaint for administrative review with this court for the narrow purpose of determining whether Plaintiff is subject to an exemption under 211.3A (2) of the Act.

Standard of Review

The facts of this case are not in dispute. Similarly, neither party disputes that the case turns on an interpretation of Section 211.3A (2) of the Act. Therefore, this is a case of mixed fact and law, defined as a case where the facts are admitted or established, the rule of law is undisputed, and the only question is whether the facts satisfy the statutory standard. *AFM Messenger Serv. v. Dep’t of Emp’t Sec.*, 198 Ill. 2d 380, 391 (2001). In cases of mixed fact and law, the court will only reverse the Board if the Board’s decision is clearly erroneous. *Moss v. Dep’t of Emp’t Sec.*, 357 Ill. App. 3d 980, 984-85 (1st Dist. 2005). The Board’s decision will only be considered clearly erroneous when, after reviewing the entire record, the court is left with a definite and firm conviction that a mistake has been committed. *AFM Messenger Serv.*, 198 Ill 2d at 395 (2001).

Discussion

The Act requires nearly all businesses with employees based in Illinois to pay unemployment taxes. Section 211.3A(2) of the Act provides a narrow exemption. Business seeking this exemption must be: (i) “an organization or school which is not an institution of higher education,” (ii) “operated, supervised, controlled or principally supported by a church or convention or association of churches,” and (iii) “operated primarily for religious purposes.” 820 ILCS 405/211.3.

The parties do not dispute that Plaintiff is not an institution of higher education. The second prong of the test is also not in dispute. The Act’s use of the word “or” indicates that this prong can be satisfied with operation, supervision, control, or financial support. Ms. Travis is a staff member of The Moody Church. Pursuant to Plaintiff’s Bylaws, no person may be elected or reelected to Plaintiff’s board of directors without approval of the Board of Elders of The Moody Church. The Moody Church must also approve any changes to Plaintiff’s Bylaws or Articles of Incorporation before they become effective. Finally, The Moody Church closely oversees Plaintiff’s finances, approving all major transactions and changes to its annual budget. Taken together, these factors clearly demonstrate that The Moody Church controls and supervises the Plaintiff; satisfying the second prong of the 211.3A(2) test.

The only remaining question, and the only issue in dispute, is whether Plaintiff is an organization operated primarily for religious purposes. Defendants argue that Plaintiff is merely an after-school program, and should therefore be required to pay unemployment taxes, as any after-school program would be. Defendants have pointed out that children in Plaintiff’s care spend most of their time getting homework help, tutoring, hot meals, and medical attention. Because providing these “secular” services comprises most of Plaintiff’s work, Defendants argue

that Plaintiff is not operated primarily for religious purposes. Defendants rely primarily on three cases in support of this argument.

The first case Defendants rely on is *St. Augustine's Center for American Indians, Inc. v. Department of Labor*. 114 Ill. App. 3d 621 (1st Dist. 1983). That case involved an organization that sought to help Native Americans adjust to life in the Chicago area by providing counseling, money, job training, food, clothing, and other services. The building where the center was headquartered also contained a chapel that attendees were invited to attend for various religious services. The plaintiff in that case argued that it was not subject to unemployment tax under 321.3(A)(2), predecessor to the current Act that contained the identical requirement that organizations seeking a religious exemption demonstrate that they are "operated for primarily religious purposes." Ill. Rev. Stat. 1981, ch. 48, par. 321.3(A)(2). The court found that the plaintiff in that case was not entitled to an exemption, reasoning that the primary purpose of the center was to offer social services, and that the religious purpose was secondary.

The second case Defendants rely on is *Concordia Asso. v. Ward*. 177 Ill. App. 3d 438 (1st Dist. 1988). In that case, the court held that a cemetery operated by an association of Lutheran churches did not qualify for a religious exemption, reasoning that the dominant purposes of the cemetery were to provide a place to bury the dead and to operate the cemetery. The court reasoned that these functions were not significantly different from those provided by secular cemeteries therefore not entitled to an exemption. Finally, Defendants rely on *Bethania Ass'n v. Jackson*, 262 Ill. App. 3d 773 (1st Dist. 1994), another cemetery case reaffirming the notion that burying the dead is a primarily secular function and therefore requiring religious cemeteries to pay unemployment taxes.

The instant case is factually distinct from the above cases. While *St. Augustine* is superficially similar, the Native Americans who received services from the plaintiff in that case

simply had the option of participating in religious services if they wished. Here, Plaintiff gives every child who joins the program a Bible, teaches every child Bible lessons, holds prayer instruction sessions for every child,¹ and takes the children on Christian field trips. Plaintiff keeps records on which children become Christian, and uses this record to measure its success.

Plaintiff does indeed provide many services that could, in a different context, be considered secular. But context is important. Analyzing an activity's purpose requires looking not only at the activity itself, but why it being undertaken. In the instant case, the court sees two reasons why Plaintiff provides, free of charge, hot meals, tutoring, and medical services. The first is that performing charitable acts is, in itself, a religious practice.² The second is that Plaintiff seeks to induce the children in its care to become religious Christians. More important than the motives inferred by this court, however, are the facts that (i) Plaintiff characterizes these superficially secular activities as a part of its religious practice, and (ii) nothing on the record indicates that Plaintiff made this characterization in bad faith. Therefore, the inquiry need not go further. *Cavalry Baptist Church of Tilton v. Dep't of Revenue*, 349 Ill. App. 3d 325, 331 (4th Dist. 2004).

Conclusion

Plaintiff is organized primarily for religious purposes as that term is understood in the Act. The Board clearly erred when it substituted its own judgment of religious purpose for Plaintiff's. Furthermore, the Board relied on cases that are plainly, factually distinct from the instant case. In this case, the religious nature of the program is clear in everything they do. This is not a case based upon mere motivation as to why the program was created and as such, is not

¹ In oral argument, Plaintiff's counsel conceded that its staff does not force children to pray if they decline. In the court's view, this concession does not alter the fundamentally religious nature of the program, when viewed in its entirety.

² This court is hardly the first to understand that apparently secular actions may have a religious purpose. See, e.g., *Kendall v. Director of Division of Employment Security*, 393 Mass. 731 (1985) (granting a religious exemption to a plaintiff despite the fact that plaintiff engaged in several apparently non-religious activities); *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 336 (1987) (acknowledging the difficulty in distinguishing between religious and secular activities).

the controlling factor in this review. Here, Plaintiff distributes Bibles to every student, has every student attend Bible studies and religious instruction, requires that all staff be Christians and monitors and charts the religious teaching success for each student and conducts the programs in a religious environment including Christian writing on the walls as well as Christian based field trips. All of these factors combine so that even when it is carrying out apparently secular activities, it is doing so in what the court in *Unity Christian School of Fulton v. Rowell* called a “faith-based environment.” 2014 IL App (3d) 120799, ¶ 33.

This program is no different than any other offered by a parochial school in Illinois that also receives the exemption. Here, the only difference is that The Moody Church decided to create a separate corporate entity. However, it is clear that the separate corporate entity is operated, supervised and controlled by The Moody Church and is run for a religious purpose as discussed above. As such, the Plaintiff meets the requirements under 211.3A(2) and is exempt from paying unemployment taxes. The Decision of the Board of Review is clearly erroneous.

Because the court has been able to resolve this matter solely by interpreting the religious exemption in section 211.3A(2) of the Act, the court declines to consider the arguments Plaintiff arguments raised under the Illinois Religious Freedom Restoration Act, the United States Constitution, and the Illinois Constitution.

II. ORDER

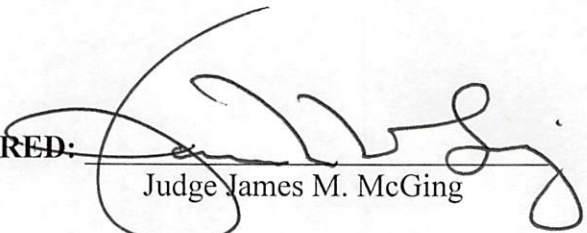
This matter having been fully briefed, and the Court being fully apprised of the facts, law, and premises contained herein, it is ordered as follows:

- A. The Board of Review Decision of the Illinois Department of Employment Security of September 1, 2017, on Docket No. 1701721 is **REVERSED**.

- B. This is a **FINAL AND APPEALABLE** order.

Date: July 18, 2018

ENTERED:


Judge James M. McGing

Judge James M. McGing
Circuit Court of Cook County
Law Division Tax and Miscellaneous Section
50 West Washington, Room 2505
Chicago, Illinois 60602

Judge James M McGing

JUL 18 2018

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