

## Trending in Legal Affairs

### From The Council on Foundations

#### Granting to Religious Institutions

With a holiday season underway and much discussion about religious freedom in the media, we thought it appropriate this week to highlight the basics of faith-based grantmaking.

Grants to churches are legal. Under the Establishment Clause of the First Amendment to the U.S. Constitution, government actors are prohibited from advancing or inhibiting religion. However, the Establishment Clause, generally, does not apply to grantmaking foundations as private actors using private funds. So, there is no legal restriction against making grants to churches, synagogues, mosques or other religious institutions. In fact, the section of the tax code that defines charitable organizations includes the promotion of religion. Unless a foundation's organizing documents (certificate of incorporation, trust instrument or bylaws) prohibits funding to religious organizations, grantmakers may grant to religious institutions such as churches for use with their core, religious functions.

A common inquiry the Council's Legal Affairs team receives on religious grantmaking is whether there is a need to verify the charitable status of a church or religious organization that may not have an IRS determination letter. It is important to note that churches receive unique treatment under the tax code, and do not have to file for tax exemption for the IRS to recognize them as exempt under § 501(c)(3).

If the religious organization is something other than a church as defined in the regulations, additional due diligence may be required on the part of the grantor foundation. That due diligence can include reviewing financial and other organizational information from these institutions just as they would from other potential grantees. Similarly, grantmakers may place conditions on their grants to churches just as they would with other grantees, including imposing financial and other reporting requirements.

For more information on this or any other tricky legal matters, please contact the Council's Legal Affairs team at [legal@cof.org](mailto:legal@cof.org).

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