

**CITY OF MIAMI
CITY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Ana M. Gelabert-Sanchez, Director
Planning and Zoning Department

FROM: Alejandro Vilarefio
City Attorney

DATE: August 26, 2003

RE: Request for Legal Opinion: City Code Section 62-156(b) Fee Cap; St. Stephen's Episcopal Church, 3439 Main Highway; A # 03-00463
(MIA 03-00012)

This is in response to your request for a legal opinion wherein you asked substantially the following question:

WHETHER ST. STEPHEN'S EPISCOPAL CHURCH IS
ENTITLED TO A WAIVER (CAP) OF ZONING
APPLICATION FEES PURSUANT TO SECTION 62-156(b)
OF THE CITY CODE.

The answer to your query is in the negative.

St. Stephen's Episcopal Church ("St. Stephen's") has filed a zoning and land use change application for its referenced property. The applicable zoning related fees, according to information submitted by legal counsel for St. Stephen's, are "over \$25,000." Consequently, St. Stephen's sought to avail itself of a provision of the City Code that allows certain types of institutions to cap certain zoning related fees at nine hundred dollars (\$900.00).

Section 62-156(b) of the City Code provides, in part, that:

The maximum fee to be charged any institution of an **eleemosynary character** for any **change of zoning or variances** shall be \$900.00; any institution so applying shall submit its articles of incorporation to the director of the department of planning, building and zoning for a review prior to acceptance of the application (emphasis added).

"Eleemosynary" is defined in *The American Heritage Dictionary of the English Language* as: of or pertaining to **alms** or the giving of **alms**; charitable; dependent upon or supported by **alms**;

contributed as **alms**; gratuitous (emphasis added). "Alms" is defined in *The American Heritage Dictionary of the English Language* as: Money or goods given to the poor in charity. "Character" is defined in *The American Heritage Dictionary of the English Language* as: "The combination of qualities or features that distinguishes one person, group, or thing, from another."

Read together, the above-cited definitions indicate that an "institution of eleemosynary character" is one whose **distinguishing quality or feature** is the provision of support and assistance to the poor.

It is unquestioned that St. Stephen's is a charitable, non-profit institution. Nor does this Office challenge or question St. Stephen's altruistic deeds and programs within and without the City of Miami and other locales. Such acts of institutional magnanimousness are not, however, the sole criterion for a Section 62-156(b) "eleemosynary" exemption.

The very first portion of the Internal Revenue Section 501(c)(3) Ruling provided by St. Stephen's to the Planning Director, in support of the subject fee cap request, states that:

This refers to the information submitted for use in determining your (St. Stephen's) status and the status of your subordinate congregations for Federal income tax purposes.

Based on the information supplied, we rule that you and your subordinate congregations named in the group exemption roster you submitted are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, as it is shown that **you and such subordinate congregations are organized and operated exclusively for religious purposes** (emphasis added).

Additional information submitted by counsel for St. Stephen's in support of its request clearly demonstrates that St. Stephen's unselfishly and admirably provides a much-needed service to this and other communities in a variety of ways, and that is to be highly commended. However, that activity is clearly a subordinate aspect of the church's mission, not its essential "character."

As the Florida Third District Court of Appeal very recently opined in *Royal World Metropolitan Inc. v. The City of Miami Beach*, 28 Fla. L. Weekly D1620 (Fla. 3rd DCA July 16, 2003):

Legislative intent is the polestar that guides the court's statutory construction analysis. To this end, a statute should be construed and applied to give effect to the legislative intent, regardless of whether such construction varies from the statute's literal meaning. "Intent is traditionally discerned from historical precedent, from the present facts, from common sense, and from an examination of the purpose the provision was intended to accomplish and the evils sought to be prevented." (Citations omitted).

With the exercise of common sense, it is apparent that St. Stephen's' *essential* "character" is "religious" (religious teaching), not "charitable." As such, it is not entitled to the subject fee cap; and this is very likely the case with every church, synagogue, mosque and temple in the City of Miami, notwithstanding the fact that they, too, may (and in all likelihood, do) provide generous support to the poor. To expand the subject fee cap provision to include all institutions involved in "charitable" endeavors, religious or otherwise, could debilitate the City's planning and zoning fee structure and promote unacceptable fiscal deficits. This could not have been what the City Commission or the drafters of Section 62-156(b) intended.

It is also important to note that Section 62-156(b) only caps fees on applications for changes of zoning "*changes*" and "*variances*." It does not cap fees for any other applications; including comprehensive plan amendments, special permit, special exceptions or other provisions of the City's land development regulations.

CONCLUSION

As a consequence of the foregoing, this Office is of the opinion that although St. Stephen's is a non-profit institution involved in extensive charitable endeavors, it is not a member of the category of institutions intended by the City to be capped at nine hundred dollars (\$900.00) for zoning related fees. A qualifying institution of an "eleemosynary character," within the scope of Section 62-156(b), is one whose primary institutional purpose, mission or *raison d'être* is the provision of support to poor people. St. Stephen's obvious and declared purpose is for "religious purposes" (religious teachings).

C: Mayor and Members of the City Commission
Joe Arriola, City Manager
Alicia Cuervo Schreiber, Chief of Neighborhood Services
Jorge Cano, Director, Capital Improvements Projects
Hector Lima, Director, Building Department
Francisco Garcia, Zoning Administrator
Teresita Fernandez, Executive Secretary, Hearing Boards Department