

STATE AUTHORIZATION OF RELIGIOUS COLLEGES.

As the world of state authorization becomes more clear and the SARA option more widespread, one area of concern has caused a certain amount of inquiry and occasionally some vigorous but ill-informed comment. This is the way that states interact with religious colleges.

Many colleges began under the administrative authority of churches or denominations. That is one of the traditional ways that colleges came to the U.S. and to the states—indeed, it is one of the prime original sources of “college” authorization. However, canon law expert Peter Harrington notes that even early religious colleges “had to obtain special approval from the state before they could grant college degrees.”¹ These early colleges trained people for the ministry, but did not necessarily grant degrees, and never granted degrees without a royal charter or one conferred by a government.²

CAN CHURCHES ISSUE DEGREES?

States, which authorize over 98 percent of all U.S. colleges to issue degrees, use two principal methods to authorize issuance of degrees: charters and licenses. Charters are generally issued directly by a legislature while licenses, which take many forms and sometimes are simply a letter of authorization, are generally issued by a state agency empowered to do so. Religious colleges have obtained degree authorization through both methods.

Most legal authorities agree that the issuance of degrees is a secular activity that is controlled by governments. There are a number of cases that deal specifically with this issue. In one case, a religious college argued that because its beliefs precluded it from applying for state licensure as a degree-granting institution, it should be allowed to issue degrees because doing so was a protected function under the First Amendment. The New Jersey appellate court disagreed, concluding that:

“... the State’s program for licensing institutions of higher education is applicable to sectarian institutions and that facially it does not unduly interfere with the free exercise of religion nor create an excessive state entanglement with religion.”

The Tennessee Supreme Court reached a similar result. The court concluded that the issuance of degrees, even in religious subjects, was a matter for state control, because although the school’s educational function was protected under a free exercise theory, the government has sole authority over all degree-granting.

In a similar case from Ohio involving a school that issued only religious degrees, the result was the same: degrees could not be issued without state authorization. In that case, the trial judge found that the school could continue “teaching or offering to teach courses of instruction the content of which is wholly of a religious nature; provided, however, that no degrees or diplomas are issued, awarded or granted.” The Ohio appellate court found that:

“While it is recognized that there is great merit, and a continuing need, for the teaching of theology and related religious subjects, it is also recognized that there is a great public need and necessity to establish a method of appropriate governmental review of those institutions offering professional degrees or diplomas as evidencing advancement by individuals engaged in the study of such subjects.”

The Attorneys General of Arkansas, Texas, Kentucky, and Nevada have expressed similar views as to degrees; ‘diploma’ is generally considered a more generic unprotected term. These cases and their progeny are considered the leading cases.

THE ‘RELIGIOUS EXEMPT’ CONCEPT IN THEORY AND PRACTICE

One of the blurriest pieces of the U.S. degree-granting puzzle is the status of entities known as ‘religious exempt’ colleges that exist in 22 states. There are many so-called ‘religious exempt’ colleges around the U.S., but in every case the



exemption is expressly established or formally allowed by the state legislature. This is therefore a hybrid system under which the state in effect delegates its degree authorization powers to churches that want to issue degrees. In many, but not all, cases the degrees issued by these colleges must have a religious title and are designed for use in ecclesiastical settings. The analysis of their status and effect may differ if they issue non-religious degrees.

Religious exemption for degree-granting colleges is a controversial practice in postsecondary education. Twenty-nine states do not allow it at all, and in those states where it is established in law, it is all but universally done contrary to the wishes of higher education professionals. As Stewart and Spille pointed out in their excellent overview of the problems with religious exemptions:

“There are at least three big losers in this situation. The nation’s authentic religious community is the most obvious of these: its good name is being taken in vain. Accredited higher education institutions, particularly those with ties to well-established religious bodies, are another victim: the integrity of degrees is being compromised. A third loser is the general public, as its members are exploited and “served” by persons – especially “counselors” – who hold meaningless degrees.”³

Twenty-one states and Puerto Rico allow religious exemptions in some form. The colleges operating under these laws are operating legally under the laws of their states, therefore the degrees are probably technically valid, at least in situations where the degree-granters are named. In most cases, no one knows or can find out whether the academic programs issuing the degrees are any good or even exist at all. In eleven states that don’t require any review at all of religious exempt applications, the providers may be simply mail-order degree mills – no one knows. In this situation, accreditation serves as a useful qualitative screen, as so few exempt schools are accredited.

In many states, religious exempt degrees can only be issued with degree titles that are clearly religious in nature. This idea has usually been uncontroversial, though it has provided an undercurrent of argument in some cases.

CAN “RELIGIOUS EXEMPT” COLLEGES PARTICIPATE IN SARA?

SARA assumes that states have ongoing connections to the colleges that they have authorized to issue degrees. This is a polite fiction, as it is common knowledge that many states ignore the activities of their nonpublic colleges that have operated for decades, sometimes under ancient charters. However, it is also true that these charters and state licenses, including religious exemptions granted by a state, are limited in effect to the state by which they were issued.

A religious exempt college in Oregon can operate under SARA in Alabama, and vice-versa, under the same conditions as any other institution. It has to be accredited by a federally recognized accrediting association, it has to meet either federal or comparable state financial responsibility requirements and it has to apply using the same form and agree to the same standards that any other college does. In short, there are no religious exemptions for operating within SARA, but there are no special requirements either. All SARA applicants come through the same gate.

In practice, this will cause some of the same hand-wringing that certain private nonreligious colleges indulge in today. Is the college willing to allow the state that chartered it to assume certain responsibilities for its activities outside that state? The answer is the same to a religious college as to anyone else: you don’t have to participate in SARA even if your state joins, you can go through the existing state authorization processes of the states where you want to operate: your exemption, like your authorization to grant degrees, stops at the state line.

The world of religious higher education is a large, varied and boisterous one in the U.S. I hope that this note has helped make its fundamentals more clear.

*A more detailed discussion of this issue including citations to applicable court cases and attorney general opinions can be found in Chapters 3 and 4 of my book *College and State*. This chapter and others will be updated in revised material to be included in *State Authorization of Colleges and Universities*, due in October 2016.*

ENDNOTES

¹ Peter J. Harrington, “Civil and Canon Law Issues Affecting American Catholic Higher Education 1948-1998: an Overview and the ACCU Perspective.” *26 Journal of College and University Law* 67 (1999).

² For a more detailed discussion of the origin of degree-granting authority, see *College and State* (Contreras 2013), Ch. 1

³ David Stewart & Henry Spille, “Religious Exemptions Threaten Higher Education’s Integrity.” *Educational Record* (American Council on Education, Spring 1993, p. 46-50). This problem has not improved in the years since Stewart and Spille wrote. For an excellent and entertaining look at this subject in detail, see Steve Levicoff, *Name It and Frame It* (1995). See also Jason Baker, *Baker’s Guide to Christian Distance Education* (2000), which discusses accredited religious schools that offer distance education and is more easily available (via Baker Books, Grand Rapids, MI) than Levicoff.