



TEXAS MUNICIPAL LAW BULLETIN™

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Grants of Public Funds to Religious Entities

The recent United States Supreme Court case *Trinity Lutheran Church of Columbia, Inc v. Comer* may make it easier for private religious groups to receive government funding.

In *Trinity*, the Supreme Court found that a Lutheran church had been unfairly denied a grant. The State of Missouri offers aid to public and private schools as well as other nonprofit entities for purchasing playground surfaces. This grant, however, was denied to a church's preschool and daycare because the State Department of Natural Resources had a categorical policy to disqualify any religious organization. This was due to a provision of the State Constitution stating that no public funds may be used to aid religious organizations, including churches, temples, mosques, or any other religious groups. The Court found this policy of exclusion violated the Free Exercise Clause of the First Amendment by essentially forcing Trinity to choose between receiving aid from a State benefits program or continuing operation as a church.

In addition to Federal First Amendment concerns, there are state laws that also impact who can be awarded a government grant. Under Article 3, Section 52 of the Texas

Constitution, governments may expend public funds to achieve a legitimate public purpose, but they are prohibited from engaging in charitable actions. The Supreme Court of Texas has set the following three-pronged test to determine the legality of a government grant: 1) The purpose of the payment must be to accomplish a public purpose, not benefit a private party; 2) the recipient of the grant must retain control over the funds to ensure the public purpose is accomplished and the public's investment is protected; and 3) the recipient must ensure that it receives a return benefit for all public monies spent. What constitutes a return benefit, however, is loosely defined. The Texas Attorney General has held that "the return benefit received by the school district need not be monetary, but instead may be accomplishing the school district's public purpose." TEX. ATT'Y GEN. OP. GA-0076 (2003)

It is unclear how a decision like *Trinity* may expand or alter the definition of a public purpose versus a charitable action. A State's qualifications for a grant may be vulnerable to challenge if they too broadly disqualify religious organizations.

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