MARGATE CRA

TO: Diane Colonna, Executive Director

FROM: Eugene M. Steinfeld, Counsel

DATE: November 2, 2015

RE: GRANTS TO RELIGIOUS INSTITUTIONS

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At the Community Redevelopment meeting of October 14, 2015, I was asked to research the issue of whether grants from the Agency could be made to religious institutions, schools, etc. The answer is not an easy one; but generally, I would advise against it.

Article 1, Section 3 of the Florida Constitution, provides as follows:

> "Religious freedom.—There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution." (e.s.)

Based upon a clear reading of the last sentence of Section three of Article I of the Florida Constitution, it would seem that such grants, such as façade grants, to churches and church schools, would be specifically prohibited. This is so as the "no aid" provision in the Florida Constitution is "substantially more restrictive" then the restriction in the Federal Constitution prohibiting the "establishment of religion". Bush v. Holmes, 886 So 2d 340 (Fla. 1st DCA, 2004), affirmed at 919 So 2d 392 (Fla., 206). See also Council for Secular Humanism, Inc. v. McNeil, 44 So. 3d 112 (Fla. 1st DCA, 2010).

However, "aid" to religious institutions has been allowed where no funds have been expended from the public treasury (Norr v. Brevard County Educational Facilities Authority– educational revenue bonds for dormitories and cafeterias of whose church affiliated institutions may be benefitted.) Southside Estates Baptist Church v. Board of Trustees 115 So 2d 697 (Fla. 1954) – schools allowing churches to utilize empty classrooms at public school at non-school hours) Koerner v. Borck, 100 So. 2d 398, (Fla. 1958) – City owned lake utilized for baptisms).

Further, public agency funds have been allowed to be expended where **public services** have been provided by a religious institution. Council for Secular Humanism, Inc., v. McNeil, supra –

(Department of Corrections funding a faith based substance abuse transitional housing program). Atheists of Florida, Inc. v. City of Lakeland, Florida, 713 F.3d 577 (Fla. 11th Cir, 2013) $1,200 to 1,500 expended to arrange for invocational speakers to attend City meetings).

To be prohibited under the Florida "no aid" constitutional provision, the appellate Courts of the State have often required state or local agency expenditures to be not only from a public agency to a religious institution; but also, to have furthered the advancement of theological views. (Atheists of Florida, Inc. v. City of Lakeland, supra. However, certain cases, they have not so provided – use of vouchers by parents of school children indirectly benefiting religious schools and indirectly benefitting those institutions.) Bush v. Homes, 886 So 2d 340 (Fla. 1st DCA 2004).

However, there is no case where the courts have opined upon a grant of an agency's monies to a church or its school that would directly benefit the infrastructure of the building or buildings of the institution itself. This is ominous as the Florida Supreme Court has stated that courts should determine only on a fact based individual basis when the "no aid" provision of the Florida Constitution is implicated. Atheists of Florida, Inc. v. City of Lakeland, Florida supra. This is especially cautionary as any taxpayer in the CRA, or contributory government would have standing to bring an action against the CRA, challenging the grant to a religious institution. This is so as it would be a claimed constitutional (not just statutory) violation.

Finally, excluding religious institutions for funding does not violate the free exercise of religion provision as contained in either, the Florida or Federal Constitutions. Bush v. Holmes, 1st DCA. supra. There also would be no application as to the Florida Religious Freedom Restoration Act of 1998 (Chapter 761 of the Florida Statutes) nor the Federal Religious Freedom Restoration Act (42 U.S.C. 2113).

## Conclusion

If the Margate CRA provided a façade grant to a religious school or institution, and it was challenged, it most likely would be a case of first impression to be settled ultimately by the Florida Supreme Court.