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*Governor*

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*Lieutenant Governor*

State of Utah  
Department of Commerce  
Division of Securities

FRANCINE A. GIANI  
*Executive Director*

JASON P. PERRY  
*Deputy Director*

WAYNE KLEIN  
*Director*

March 21, 2006

Mr. Michael V. Lee  
McDermott Will & Emery  
18191 Von Karman Avenue, Suite 500  
Irvine, CA 92612-7108

Re: Opinion Letter  
Church Development Fund, Inc.

Dear Mr. Lee,

This is in response to your letter dated March 6, 2006 addressed to George Robison of the Utah Division of Securities.

Your letter avers that employees of the Church Development Fund, Inc. (CDF), including Katherine J. Cain and Christine C. Mathis, should not be required to license as issuer agents under the Utah Uniform Securities Act (Act). You base this position on the federal Philanthropy Protection Act of 1995 (PPA) which, you assert, "provides an exemption for charitable organizations and its [sic] employees with respect to dealer, broker and agent licensing requirements under state law." Your letter concludes with "CDF's position that the Utah Act, as it pertains to the regulation or licensing of CDF Employees as issuer agents, is preempted by the PPA."

Alternatively, you ask that the Division exercise its discretion to grant CDF a waiver of the licensing requirements under the Act.

Philanthropy Protection Act of 1995

Your letter accurately quotes language from section 6(b) of the PPA that:

No charitable organization, or any trustee, director, officer, employee or volunteer of a charitable organization acting within the scope of such person's employment or duties, shall be required to register as, or be subject to regulation as, a dealer, broker, agent, or investment adviser, under the securities laws of any State . . . .

You then assert that, based on this language, "the PPA preempts the Utah Act to the extent that it regulates or requires registration [of] CDF or any CDF Employees as dealers, brokers, agents or investment advisers."

The Division does not read the preemption language in section 6(b) of the PPA as absolute. Instead, preemption applies only for transactions involving securities owned by charitable organizations or for securities transactions involving, a “pooled income fund, collective trust fund, collective investment fund, or similar fund maintained by a charitable organization exclusively for the collective investment and reinvestment of [endowment funds, income funds, and contributions].” Section 2(a).

### Scope of the PPA

The purpose of the PPA is to enable charitable organizations to manage the funds entrusted or donated to them without concern that such activities would require a securities license. If the preemption were as broad as asserted in your letter, the language of section 6(b) would have ended after the word “State.” Indeed, a reading as broad as advocated by CDF would mean that a charitable organization, such as CDF, could engage in a wide range of commercial brokerage business such as investment banking, market making, customer account execution, or public investment advisory services without any of the licensing, supervisory, or customer protection responsibilities imposed on other broker dealers and their agents.

Your letter hints that CDF recognizes that the preemption contained in the PPA is not as broad as claimed elsewhere in the letter. The letter has no discussion of the legislative history of the PPA or any court cases interpreting it. Your quotation from section 6(b) is selective – omitting the conditions under which preemption is effective. (I want to note that we find this omission troubling.) Plus, you ignore the statement of purpose in the statute’s introduction, that the PPA seeks to “facilitate contributions to charitable organizations”. Our understanding of the CDF program is that these are investments, not contributions.

### Possible Explanations for the PPA Claim

The Division is thus left with three possible explanations for the claim of PPA preemption. One, that our reading of the PPA is incorrect and that our Act is, in fact, preempted in this regard. Two, that CDF made this request (and the assertions in the letter) without correctly understanding the scope of the PPA. Three, that CDF was hoping that the Division might be confused into thinking that the limited scope of the PPA is a broad preemption and therefore accept CDF’s avowal that the preemptive language precludes application of state law.

If the first explanation is the proper one, the waiver request by CDF is unnecessary. In that situation, the Utah Act is preempted. If this is the position that CDF asserts, we invite CDF to provide a more thorough analysis of the scope of preemption of the PPA, including a discussion of any legislative history or court cases affirming your description of the broad scope of the PPA’s preemptive provisions.

If the second or third explanation is correct, then there is no preemption on this point and the letter’s discussion of the PPA is either superfluous or designed to encourage the Division to believe preemption is an important consideration. Both of these possibilities argue against the

Division exercising its discretion to grant a waiver of the licensing requirement. Unfamiliarity with the law, while unfortunate, might be excusable in other contexts. However, when the unfamiliarity is manifest in the securities arena – where knowledge of the law is so critical – we cannot take the risk that the unfamiliarity might also be reflected in inadequate training of CDF employees or unfamiliarity with the law by CDF employees.

The most troubling explanation is the possibility that CDF affirmatively encouraged the Division to misconstrue the scope of the preemption. Such a ploy would be inappropriate for a charity or other entity seeking a discretionary waiver. If this explanation were accurate, it would not provide a sound basis for granting a waiver.

### Conclusion

If CDF believes that the PPA's preemption is absolute, we invite it to provide additional support for that view. If not, we are left to conclude that the positions asserted in your letter are the result of unfamiliarity or a hope the Division would misconstrue the scope of preemption. In this situation, no waiver is appropriate.

Nonetheless, the Division will permit issuer agents previously licensed with the Division to renew their licenses in Utah. New issuer agents will be licensed only if they meet conditions set forth in the Act. CDF could accomplish this by making Ms. Cain or Ms. Mathis officers of CDF.

We welcome any further information or explanations you would like to provide.

Sincerely,



Wayne Klein  
Director

cc: Benjamin Johnson  
Director  
Corporate Finance Section

# McDermott Will & Emery

Boston Brussels Chicago Düsseldorf London Los Angeles Miami Munich  
New York Orange County Rome San Diego Silicon Valley Washington, D.C.

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March 6, 2006

## VIA EMAIL AND U.S. MAIL

Mr. George Robison  
State of Utah  
Department of Commerce  
Division of Securities  
160 East 300 South, 2nd Floor  
P.O. Box 146760  
Salt Lake City, Utah 84114-6760

Re: Church Development Fund, Inc.

Dear Mr. Robison:

We are counsel to Church Development Fund, Inc. ("CDF"). As you know, there have been communications between your office and CDF, on matters relating to licensing of CDF employees as issuer agents in connection with CDF's offer and sale of its debt securities in the State of Utah. CDF has requested that we communicate with you further regarding these matters.

It is our understanding that your office has confirmed that Steve E. Miles and Stephen S. Walker would be "grandfathered" in and continue to be licensed as issuer agents in Utah. It is also our understanding that your office will not permit licensing of Katherine J. Cain and Christine C. Mathis as issuer agents under the Utah Uniform Securities Act (the "Utah Act") because they are not officers or directors of CDF. Pursuant to your suggestion to CDF, we have prepared this letter to set forth CDF's position and requests as follows:

1. Katherine J. Cain and Christine C. Mathis (and other employees of CDF) should not be required to obtain licensing as issuer agents under the Utah Act because the federal Philanthropy Protection Act of 1995 (the "PPA"), which preempts state law, provides an exemption for charitable organizations and its employees with respect to dealer, broker and agent licensing requirements under state law.
2. If you do not concur with the application of the PPA, CDF requests a waiver of agent licensing for CDF's employees (or specifically for Katherine J. Cain and Christine C. Mathis) because of CDF's organization and operation as a non-profit, religious corporation and its conduct in offering and selling its securities.

### ***Background***

Before we proceed with our position and analysis, it may be helpful if we provide you with some background information about CDF. CDF is a nonprofit religious corporation recognized by the Internal Revenue Service as a 501(c)(3) tax-exempt organization. CDF is a church extension fund that offers and sells debt securities on a national basis to a limited class of investors who meet certain eligibility criteria to raise money principally to make loans to independent Christian Churches, Churches of Christ, or other autonomous churches or para-church ministries. CDF uses solely employees of CDF (“CDF Employees”) (and not underwriters or outside selling agents) to effect sales transactions of CDF’s securities. CDF does not pay any commissions or underwriting expenses in connection with the offer or sale of its securities; CDF Employees are paid a normal salary which is not based on the amount of securities sold. Furthermore, CDF Employees are not paid any bonus based on the amount of securities sold. Each investor in CDF’s securities is provided with a written offering circular setting forth the details, including risk factors, of CDF’s securities. The offering circular also includes CDF’s most recent annual financial statements as audited by an independent auditor, BDO Seidman LLP.

### ***Philanthropy Protection Act of 1995***

Section 6(b) of the PPA provides “[n]o charitable organization, or any trustee, director, officer, employee, or volunteer of a charitable organization acting within the scope of such person’s employment or duties, shall be required to register as, or be subject to regulation as, a dealer, broker, agent, or investment adviser under the securities laws of any State . . . .” The PPA defines “charitable organization” as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986. Section 6(c) of PPA further provides that “a State may enact a statute that specifically refers to this section and provides prospectively that this section shall not preempt the laws of that State” if such statute is enacted within three (3) years after the enactment of the PPA (which was enacted in 1995).

CDF qualifies as a charitable organization under the PPA because it is a non-profit, religious corporation recognized by the Internal Revenue Service as a 501(c)(3) tax-exempt organization. CDF offers its securities through the CDF Employees whose activities with respect to the offer and sales of securities are within the scope of their employment. Finally, the Utah Act does not contain any statutory reference that Utah has opted out of the applicability of the PPA and the time period for Utah to adopt such an exclusionary provision has expired.

Accordingly, the PPA preempts the Utah Act to the extent that it regulates or requires registration CDF or any CDF Employees as dealers, brokers, agents or investment advisers. Therefore, CDF requests that it not be required to obtain licensing of itself or any CDF Employees as a dealer, broker, agent, or investment adviser under the Utah law.

***Investor Protection***

Section 61-1-13(1)(b)(ii) of the Utah Act states that an “[a]gent does not include an individual who represents: (A) an issuer who receives no commission or other remuneration, directly or indirectly, for effecting or attempting to effect purchases or sales of this state, and who ... (III) effects transactions exempted by Subsection 61-1-14(2).” Section 61-1-14(2)(s) provides for “any transaction as to which the division finds that registration is not necessary or appropriate for the protection of investors.”

CDF is a nonprofit entity organized and operated exclusively for religious purposes. CDF is a church extension fund that offers and sells its securities solely to a limited class of investors who meet certain eligibility criteria to raise money principally to make loans to independent Christian Churches, Churches of Christ, or other autonomous churches or para-church ministries. Each investor in CDF’s securities is provided with a written offering circular setting forth the details, including risk factors, of CDF’s securities. With respect to Katherine J. Cain and Christine C. Mathis, both have passed the Series 63 examination and, except that they are not currently officers or directors of CDF, they are otherwise qualified for licensing as issuer agents under the Utah Act.

Accordingly, CDF respectfully requests that the Utah Department of Securities grant CDF Employees (or more specifically Katherine J. Cain and Christine C. Mathis) exemptions from issuer agent licensing in connection with the offer and sales of CDF securities in the State of Utah.

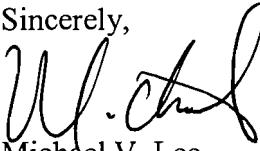
***Conclusion***

It is CDF’s position that the Utah Act, as it pertains to the regulation or licensing of CDF Employees as issuer agents, is preempted by the PPA. CDF is therefore not required to obtain issuer agent licensing of the CDF Employees. We recognize that CDF previously obtained issuer agent licensing for two of its employees. As new counsel for CDF, our review of the PPA and the Utah Act leads us to conclude that such licensing was not required. If you do not concur with our analysis of the PPA, CDF respectfully requests that the Utah Division of Securities exercise its authority pursuant to Section 61-1-14(2)(s) to grant CDF Employees (or more specifically Katherine J. Cain and Christine C. Mathis) exemptions from issuer agent licensing requirements.

George Robison  
Utah Division of Securities  
March 6, 2006  
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If you need further information, please feel free to contact me. Thank you for your time and consideration of this matter.

Sincerely,



Michael V. Lee

MVL/hs  
cc: CDF