

THE RUTHERFORD INSTITUTE

Post Office Box 7482
Charlottesville, Virginia 22906-7482

JOHN W. WHITEHEAD
Founder and President

TELEPHONE 434 / 978 - 3888
FACSIMILE 434/ 978 - 1789
www.rutherford.org

Constitutional Q&A: Helping the Homeless

© 2016 The Rutherford Institute¹

For those who are homeless, finding a warm place to shelter during frigid winter temperatures often becomes a matter of survival.

Unfortunately, charitable efforts to provide shelter and food to the homeless, especially during the winter, are often thwarted by local governments through the use of zoning laws that restrict or prohibit the provision of services to the need.

The Rutherford Institute has repeatedly defended the right of religious institutions and relief organizations to minister to the homeless and needy. For churches and other religious institutions encountering difficulties in their attempts to help the poor and homeless, we offer the following guidance.

Q: My church would like to provide assistance to the homeless and needy. Does the law protect our right to do that?

A: Yes, when a church extends care to the homeless and needy as part of its religious mission, this action is protected by the United States Constitution. The First Amendment provides that “Congress shall make no law respecting the establishment of religion, *or prohibiting the free exercise thereof*[.]” When a Christian church, for example, provides shelter to the homeless under the Bible’s directive to “share your bread with the hungry and bring the homeless poor into your house,”² or a mosque practices the core Islam tenet of alleviating the lot of the needy,³ these acts constitute an exercise of religion and are protected by the First Amendment.

Q: Does the right to free exercise of religion allow churches to do whatever they want in providing care and assistance to the homeless and needy?

¹ The Rutherford Institute, a nonprofit civil liberties organization based in Charlottesville, Va., is deeply committed to protecting the constitutional freedoms of every American and the integral human rights of all people through its extensive legal and educational programs. The Institute provides its legal services at no charge to those whose constitutional and human rights have been threatened or violated. The Institute’s mission is twofold: to provide legal services in the defense of civil liberties and to educate the public on important issues affecting their constitutional freedoms.

² Isaiah 58:7, English Standard Version.

³ <https://insideislam.wisc.edu/2012/04/helping-others-a-core-principle-of-islam/>

A: No, there are many laws and regulations that churches and individuals must follow even though the law limits their ability to practice their religious beliefs. The Supreme Court has ruled that the First Amendment's protection of religious freedom does not guarantee that persons or religious organizations are exempt from requirements of the law when they are engaged in religious activity. If a law was not adopted in order to burden religious practices and the law applies equally to religious and non-religious activity, a church must comply with the law even though the effect is to place a burden on the practice of religion.

Q: What kinds of law might restrict the ability of a church to provide care and assistance to the homeless and needy?

A: Very often a church which is providing shelter or food to the homeless and needy is told that this is in violation of local land use and zoning regulations. Most cities and counties, particularly larger ones where there are more homeless, have adopted laws that restrict what activities can take place on property within particular areas of the locality. The locality is divided into different zones and uses are allowed within the zones that are compatible to the makeup of the zone. For example, residential neighborhoods or zones should not have a factory in them because the factory is not conducive to residential living. The local land use enforcement authority may consider that the activities the church is undertaking on behalf of the homeless or needy are a use of property that is not allowed in the area where the church is located.

Q: How might a church's provision of care for the homeless and needy violate the law?

A: While each locality and its laws are a different, the following are some examples of cases where localities have restricted a church in providing for the homeless and needy:

- A church that allowed a homeless woman to stay in a trailer on its property was cited for maintaining a campground without a proper permit.⁴
- A church that allowed homeless persons to sleep on the church lawn was charged with improperly maintaining a boarding house.⁵
- A collection of churches that took turns providing the homeless shelter within the churches during the winter months were told they needed to obtain a permit before doing so.⁶

Q: How can a church know if its provision of assistance violates the law?

A: If a local government wants to stop a church from providing for the homeless or needy, it will usually issue a citation setting forth the provisions of the law that it believes the church is violating. The citation might demand that the church stop housing or feeding the homeless or it might inform the church that it must obtain the consent of the local government before continuing to do so. Obtaining consent usually means obtaining a "conditional use permit," which is a license allowing a particular use on property subject to certain conditions. However, obtaining a conditional use permit is usually a long and costly process that most churches can't afford.

⁴ <http://www.delawareonline.com/story/news/local/2016/10/06/kent-county-threatens-fine-dover-church/91617178/>

⁵ <http://www.baltimoresun.com/news/maryland/baltimore-county/dundalk/bs-md-church-homeless-fine-20161212-story.html>

⁶ https://www.rutherford.org/publications_resources/on_the_front_lines/rutherford_institute_asks_waynesboro_com_mission_to_accommodate_churches_wis

Q: What should a church do if local officials demand that it stop providing care for the homeless and needy?

A: A church should seek legal advice about whether their activities are actually prohibited by the law and whether the activities are otherwise protected by constitutions and laws guaranteeing religious liberty. A trained lawyer can examine the situation and determine whether the demands made by the locality are valid. Many times, the government's claim that the church's activities are not permitted is not valid and a lawyer should be able to convince the authorities to withdraw the citation or defend the church in proceedings brought to enforce the citation. Although the services of a lawyer can be expensive, The Rutherford Institute and other organizations provide free legal advice to religious organizations seeking to exercise their religious beliefs.

Q: What other laws provide churches protection in providing for the homeless and needy?

A: Apart from the First Amendment, the constitutions of each state also protect the right to free exercise of religion.⁷ The protection provided by a state constitution may be greater than that provided by the First Amendment and may limit the authority of local officials to restrict religious-based care toward the homeless and needy. Additionally, a federal law called the Religious Land Use and Institutionalized Persons Act (RLUIPA) provides additional protection to churches respecting the use of their land for religious purposes. Whether RLUIPA or a state constitution protects a church in a particular case depends on all the circumstances, so you should contact The Rutherford Institute for guidance and assistance.

Should you have further questions or need legal assistance in exercising your constitutional rights, please contact the Legal Department at legal@rutherford.org.

⁷ See, e.g., Va. Const. Art. I, § 16 (“[A]ll men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.”)