

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE STAG SOCIETY,)	
)	DOCKET NO.: SPT-2000-1
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

The above-entitled appeal was heard on September 14, 2000, in the City of Thompson Falls, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

The taxpayer, The Stag Society, represented by Stevens Lawrence; Hart, Overseer, and Mary Ann; Hart, Scribe, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Appraisal Specialist Virgil Byford, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and a schedule for post-hearing submissions was established. The duty of this Board is to determine whether the property qualifies for an exemption, based on a preponderance of the evidence. The Stag Society is the appellant in this

proceeding and, therefore, has the burden of proof. Based on the evidence and testimony, the Board finds that the decision of the Department of Revenue is affirmed.

STATEMENT OF ISSUE

The issue before this Board is to determine if the subject property qualifies for tax-exempt status.

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

The East 820 Feet of Lot Six in Section 1, Township 18 North, Range 25 West; approximately 13.83 acres of land and the two cabins thereon; Sanders County, State of Montana. (Assessor number 14193; geo-code number 35-2747-01-4-01-01-100M.)

3. On February 23, 1999, the taxpayer applied for a religious exemption for the subject property. (Application #3500499.) The letter accompanying the application form states, in pertinent part:

The subject property qualifies for a property tax exemption because the owner is a corporation sole which has been properly organized and recognized.

Pursuant to the laws of Montana at 15-6-201(b) and 15-6-201(d)(i) and Title 35 Chapter 3, a corporation sole's property is exempt.

4. On April 28, 1999, a form letter requesting further information was sent to the taxpayer from Virgil F. Byford, Appraisal Specialist, Compliance, Valuation and Resolution Office, Montana Department of Revenue. The information requested, which was to be submitted within thirty days, is as follows:

Proof that occupant of the parsonage is a member of the clergy (if this is a parsonage).

Articles of Incorporation: (If incorporated). I received a copy of your Certificate of Existence with the application.

*Constitution and By-Laws: (**If not incorporated**).*

A letter explaining how your organization specifically uses the real property to be considered. Is the building used for: a) a parsonage, b) religious worship services (if so, when are they held and how many members do you have), or c) other purposes (please describe in detail)?

5. Stevens Lawrence; Hart, Overseer, The Stag Society, responded to Mr. Byford's letter on May 18, 1999, stating, in pertinent part:

I think there is a degree of misunderstanding regarding our church, which may have been the result of my not having more fully explained it. So I will attempt to rectify this oversight and answer your questions to the best of my ability.

First of all, the "The Office of the Presiding Patriarch (Overseer), and his successors, a corporation sole over/for an unincorporated religious Scriptural society in the nature of Ecclesia, the Stag Society" is not a government created or government sponsored organization as described in the Internal Revenue Code at 501(c)(3), and therefore the government of Montana, pursuant to the Constitutions for America and Montana have no authority to inquire into the methods, practice, conduct or financial affairs of the church.

However, as we are commanded in Scriptures, we will cooperate to the greatest extent possible with your inquiries.

To that end, enclosed, you will find a copy of the Instrument of Acknowledgment as filed with the Secretary of State in Nevada, pursuant to law, both Canon and statutory. This filing provides conclusive evidence of proof for your questions number 1, number 2 and number 3.

Regarding question number 4, it is the position of the assembly and of myself, as the Overseer (corporation sole), that...the specific activities of the church and how we practice our religion, lie carefully protected from the prying eyes of government behind the 1st amendment to the American Constitution: "Congress shall make NO LAW respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech,..." ...we will also inform you that the land and its buildings are going to be devoted exclusively to doing God's work, in the best understanding that we can acquire..."

6. After receiving Mr. Hart's response, Mr. Byford requested the Sanders County Appraiser, Edward Thompson, to physically inspect the subject property. Mr. Thompson sent The Stag Society a letter dated August 9, 1999, requesting that Mr. Hart contact his office to schedule an appointment for the physical inspection.

7. The taxpayer responded to Mr. Thompson's request by a letter dated August 29, 1999, which states, in pertinent part:

... I wish to emphasize the constitutional and statutory nature of our Church. This Church is organized under the laws and precepts of a religion which goes back to at least the giving of the law to our Patriarch Moses on Mount Sinai, nearly 3500 years ago...

Please feel free to correct us if we are mistaken in our belief that the Constitution and more than 200 years of American law clearly and unequivocally uphold the complete separation of State control of Church

affairs. Since our Church is **not** organized as a tax exempt corporation under section 501(c)(3) of the Internal Revenue Code, and further since our Church is not organized under the laws of any state, but was organized according to principals set forth since antiquity and such organization was duly recognized by the State of Nevada, and since the full faith and credit clause of the American Constitution guarantees that such recognition will be recognized by the State of Montana, we fail to understand why you feel inclined to "inspect" or "determine some facts concerning" our church, its property, personnel or activities.

It is our opinion, but please feel free to correct us if we are wrong, that church activities, gatherings, personnel and property are all fully protected from inspections or determinations of fitness by the state. As we've stated, if we are wrong, by all means please let us know and give us knowledge of what law or laws we would be in violation of if we denied you access to our Church for any purpose other than for worship...

8. Mr. Thompson forwarded to Mr. Byford a copy of Mr. Hart's August 29th letter; and on October 14, 1999, Mr. Byford responded to Mr. Hart by letter that states, in pertinent part:

In order for property owned by a church to qualify for a property tax exemption in Montana, it must meet the requirements of Montana law under 15-6-201(1)(b), MCA. This statute states: "buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;"

This means that the property of a church must meet an ownership test and a use test in order to qualify for an exemption. Therefore, to obtain an exemption the local appraiser must conduct a physical inspection of the property to determine if it meets this use test. If the property is used for a parsonage, proof must be provided that the occupant of the house is a member of the clergy as required in the above listed statute.

In addition, the Montana Courts have ruled that the only portion of a property owned by a church that is entitled to an exemption is the building used for religious worship, a reasonable area around the church building for lawn, a parking lot, and, if needed, a 30

foot roadway across the lot for access. For the parsonage, only enough land for use of the building is entitled to an exemption (usually .5 to 1.00 acre in size). For these reasons, a physical inspection of the property by the appraiser is required to determine how much of the land meets the use test.

If you are applying for exemption of a parsonage, I still need proof that the occupant is a member of the clergy, as well as an indication of how many members are in your church and attend church services at this location. Also, the local appraiser, Mr. Edward R. Thompson, still needs to make a physical inspection of the property.

I hope this letter addresses your concerns. However, if you fail to provide the requested information and you refuse to allow us to physically inspect the property, we will have no choice but to deny your request for a property tax exemption on this property.

9. Mr. Hart responded to Mr. Byford's October 14th letter by letter dated October 27, 1999 and received by Mr. Byford on December 14, 1999. In pertinent part, the letter states:

...In your letter you state that in order to qualify for the property tax exemption that a church must meet an ownership test. Is it by some manner contested at this point that the church does not own the subject property? We purchased it in our church name did we not? We have provided you with the documents which prove our existence and organization which were filed pursuant to the Nevada Revised Statutes, have we not? I fail to understand why you wish to perform an "ownership test." Can you kindly clarify this point for me?

Your October 14th letter also states that the church must undergo a "use test." You or your appraiser are welcome to come and visit us; and by this letter you are officially noticed that I and my wife are the occupants of said property and that I hereby state truthfully, and without deceit of any nature, that this property is used for church purposes and ONLY church purposes. Your letter of October 14th goes on to state that the appraiser needs "proof" that I am a member of the clergy: well sir, I am the Overseer of this Corporation sole and no further proof, other than the

copies of paperwork you already have, is either needed or capable of being legally demanded.

As to how many members our church has, or who does or does not attend church services: this information is not something which we chose (sic) to disclose to anyone, and our right to chose (sic) to not disclose such information is fully protected by the Constitution for the United States of America and the constitution for Montana. You, however, may rest assured that since the property, both the land and the appurtenances thereto are, as I stated above, used for church purposes and ONLY for church purposes, that the people who come here also come here for church purposes. The only business I conduct here is church business, therefore people who come here by definition are here on church business...

10. On January 20, 2000, Mr. Byford answered the taxpayer's letter of October 27, 1999, stating, in pertinent part:

...The Sanders County Appraiser, Mr. Edward R. Thompson, will be contacting you in order to conduct a physical inspection of the property.

The reference in my letter to the ownership test that Churches must meet in order to qualify for an exemption was meant to illustrate what the exemption statute requires in order for a Church to qualify for an exemption. At this time we are not contesting the ownership of the property and I did not ask for any further proof of ownership for the property.

What I was attempting to obtain in my letter was some information about the use of the property. This is required because the property of a church must meet a use test in order to qualify for an exemption. There are only two uses of Church property that will qualify it for a property tax exemption under Montana statute. The buildings must be is (sic) used for a parsonage (residence of the clergy) or for actual religious worship in order to qualify for the exemption. Then the Church is allowed the amount of land that is "reasonably necessary for convenient use of the buildings." The use of the property for "church purposes and ONLY church purposes", as you state in your letter, does not qualify the property for an exemption if the uses are not the two uses required by Montana law and which I have indicated in this letter. The inspection of the property by the appraiser is needed to verify if these are the uses of the property

and to determine how much land is necessary for the use of the buildings.

Therefore, I still need the following information:

1. Which building on the property is used for "religious worship"? I still need to know how many members are in your Church, how often you hold worship services, and how many members usually attend these services in order to determine if the property qualifies for exemption under this use requirement. I am not asking for a list of your members. If you chose (sic) not to provide me this information then I will not be able to make a determination as to whether the property meets the statutory requirements for exemption and I will have no choice but to deny your request for an exemption.

2. If you are claiming that the building on the property that you and your wife occupy is used for a parsonage, please indicate which building this is. You indicated in your letter that you are the Overseer of the Corporation, how does this make you a member of the clergy? Most Church clergy members provide a Certificate of Ordination. However, if your Church does not issue Certificates of Ordination, please indicate how you are designated a member of the clergy or Overseer.

3. If you refuse or fail to answer the above questions or provide the information I have requested within 30 days, I will have no choice but to deny your request for exemption.

11. In a letter dated January 25, 2000, Sanders County Appraiser Edward Thompson asked the taxpayer to contact the appraisal office to arrange a convenient time to conduct a physical inspection of the subject property.

12. On February 17, 2000, the taxpayer responded to Mr. Byford's letter of January 20th. This three-page letter, which was received by Mr. Byford on February 29th, stated, in pertinent part:

...In your letter you state that in order to qualify for the property tax exemption, that a church must meet an ownership test...we cannot understand why your department continues to insist on claiming that a

real church comes under some inferior statute of the corporate state of Montana. What is it about the United States Constitution and the United States Supreme Court which you do not understand? These references are to the **Supreme Law Of The Land**. Is there some confusion about the words "supreme law of the land?" Is there some doubt in your department as to whether the US Constitution is the supreme law of the land?...

Way back in 1803, the United States Supreme Court was called upon to decide if state law or a state constitution was superior to or inferior to the United States Constitution. In the landmark case, Marbury vs Madison, chief justice Marshall, speaking for the whole court, stated that the US Constitution was the supreme law of the land. This case has been challenged more than 150 times in every conceivable manner during the intervening 197 years. Each and every time it has been upheld - it has never been overturned. By having challenged it so many times in so many different ways, it is now simply not possible to infer that the US Constitution is anything other than the supreme law of the land...

...the Internal Revenue Code, is written, as you know, to be specific about tax matters. It is written to specifically exclude the IRS and other Federal government functionaries from being controlling with regards to churches. The state of Montana, and by succession, the Montana Department of Revenue is bound by law to follow in the footsteps already laid down.

I suspect that you, like so many other Americans today, are woefully under informed as to the difference between a real church and a tax exempt organization. The latter is, **regardless** of its possible name as a "church," just a mere corporation which has been created by, and granted an exemption from taxation by the government; the former, on the other hand, is an organization which owes not one whit of its existence to the government, be it Federal or state or local; it owes its existence and allegiance to Our Father in Heaven, and no other. A real church is, according to the words in the Internal Revenue Code, **"MANDATORILY EXEMPT"** from filing or reporting on its activities. This wording is carefully chosen by Congress, because, as Justice Marshall declared: the Constitution is the supreme law of the land, and no one is entitled to make a law respecting the establishment or practice of religion...not even the great state of Montana!

...should an organization which is "mandatorily exempt," file or report voluntarily, then it is telling the government that it really isn't a church, but just a mere tax exempt organization, and therefore subject

to the authority and control of the government. The reason the mandatory exception to reporting on its activities is extended to the Internal Revenue Code by the United States Congress, is that a church is fully and unconditionally protected from scrutiny under the protections afforded it by the United States Constitution.

Not you, Mr. Byford, not the Montana Department of Revenue, and not the State of Montana have the power or authority to impose conditions on the existence or operation of our church. The United States Constitution says that, "...no law respecting an establishment of religion, or prohibiting the free exercise thereof..." Is there some confusion about the words, "no law?" I respectfully point out that no law, means in fact no law at all.

I also suspect that you may be laboring under the mistaken belief that this church is "subject to" or "subservient to" the statutory authority under which most other so-called churches (i.e., 501(c)(3) tax exempt corporations) are required to conform. We applied for an exemption from property taxation in good faith, believing that our religious beliefs and our religious worship and our very religion was exempt. You, on the other hand, in what we are coming to believe is **not** in good faith, keep insisting that some vague statutory authority which you refuse to provide, or some casual reference to some court case which you also refuse to provide, give you an authority superior to the Constitution of Montana, superior to the Constitution of the United States and superior to the authority of Our Heavenly Father...

If you can show us a law which comports with the Constitutions, if you can show us an authority superior to those instruments, we will duly consider it with reverence and immediacy. If you cannot, or if you do not within the next 30 days, we will consider your silence as your positive acceptance of our position that our church is entitled to a complete property tax exemption.

As we stated in our previous letter, "If we can agree on what the actual definition of "use test" is and what criteria the state is looking for us to meet, then I'm sure that agreement on the rest of the issue will be easily and quickly reached." Once again, you have failed to provide even a small clue of what a "use test" is. As we stated in that previous letter, our membership is not something we disclose to anyone and our refusal to disclose is fully protected by law: your **opinion** to the contrary notwithstanding.

Your letter of January 20th does, finally, disclose the true nature of this inquiry. ...you write: "...as to whether the property meets the statutory requirements for exemption..." You admit thereby that this inquiry is based on your attempts to obey and abide by the statutes. All statutes are required to be written to be in absolute conformity with the Constitution and any which are not are void of law. Since I am quite sure that both of us are law abiding men, I know now that you will agree that the statute you refer to (but do not provide) simply cannot be applicable to our church.

13. On March 14, 2000, Mr. Byford issued a letter to the taxpayer denying the exemption, for the reason that "applicant did not supply the information requested in the letters of 4/28/99, 10/14/99 and 1/20/2000."

14. On April 7, 2000, the taxpayer appealed the Department of Revenue's decision to the State Tax Appeal Board. The letter, which summarizes the issues discussed in previous correspondence between the taxpayer and Mr. Byford, was received by the Board on April 17, 2000. In pertinent part, the appeal letter states:

... The Church applied for a property tax exemption on or about 2-25-1999. The Department of Revenue asked for specific information. All information required was supplied timely. The Department of Revenue continued to ask for information which is not required to be supplied by a church recognized in the IRC at section 508 and which is specifically, "Mandatorily exempt" from numbering and recognition under 510(sic)(c)(3) of the tax code. In addition, supplying such information as was additionally requested by the Department of Revenue (DOR) under alleged statutory authority is in opposition to the Constitution for the united States of America and the Constitution for Montana...

The State of Montana, DOR policy notwithstanding, does not have the authority to insist that our, or any

Church recognized in the eyes of God, ... must conform to certain state derived criteria before it can be recognized by the state as a church, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...", the very first words of the Bill Of Rights. The very idea that our, or any real Church, must conform to any arbitrary criteria set forth in a "use test" before being "deemed worthy" of being granted that which is God's to begin with, is simply and completely repugnant to both the law of Our Heavenly Father and that of our state and national Constitutions...

We respectfully request that this board recognize that we are a Church, albeit one NOT "created" by corporate charter from the State of Montana, and that as is recognized by the IRC at section 508, we are fully entitled to the property tax exemption we requested.

15. On May 18, 2000, Mr. Byford submitted to the Board a response to The Stag Society's appeal, in which he requests that the Board uphold the DOR's denial of the exemption. The letter summarizes the communications between the parties to date, and explains that the exemption had been denied because:

"Mr. Hart has continually refused to provide the following requested information:

1. Which of the cabins is occupied by a member of the clergy and what qualifies that occupant as a member of the clergy. Instead he says that he is the Overseer of the church and does not explain how this makes him a member of the clergy, i.e. was he ordained by his church and therefore, given a Certificate of Ordination, does he conduct weddings, funerals, or perform other ministerial duties, etc..

2. Which of the cabins is used for "actual religious worship." An indication of how many members the church has, whether any of these members attend worship services on this property, and how often, where, and when these services take place would be an indication of whether or not one of these buildings is entitled to an exemption.

16. On June 4, 2000, the taxpayer submitted a six-page letter to the Board in response to Mr. Byford's letter of May 18th. This letter, entitled "*Affidavit as Evidence in Case Docket Number SPT-2000-1*," is presented in its entirety as part of Taxpayer's Exhibit 1 in the following section of this decision.

17. A post-hearing brief was submitted to the Board by the DOR on October 13, 2000.

18. A request for an extension of time to respond was filed by the taxpayer on November 13, 2000, and the motion was granted by the Board.

19. The taxpayer's response to the DOR's brief was received by the Board on November 27, 2000.

TAXPAYER'S CONTENTIONS

Taxpayer's Exhibit 1 is a 34-page document containing copies of the property tax exemption form, corporate documents, correspondence between the taxpayer and the Department of Revenue (as previously summarized in the Factual Background of this decision), and the six-page "*Affidavit*" referred to above (Factual Background, #16). The affidavit, which contains a summary of the taxpayer's argument, was notarized by a Jefferson County, Oregon, Notary Public on June 14, 2000, and is reprinted as follows:

AFFIDAVIT AS EVIDENCE IN CASE DOCKET NUMBER SPT-2000-1

Dear Mr. Thornquist and members of the Appeal Board:

Response to Letter from Mr. Virgil F. Byford, Appraisal Specialist to this Board. In an attempt to clarify and speed up the review and appeal process, The Stag Society's Overseer, Mr. Stevens Lawrence; Hart, hereinafter, Mr. Hart, would propose that a brief stipulation to certain facts is in order. Since the letter submitted to you by Mr. Byford and the notice of appeal letter submitted by myself contain certain material facts, I suggest that it be recommend (sic) that the parties stipulate to these facts as set forth below, so that this honorable board can focus on the real issue in contention herein.

If all parties agree, in writing, to the below, the following material facts can be stipulated as to their relevancy, and accuracy. If opposing parties agree, this letter may be taken as written acceptance of said stipulated facts by myself, Mr. Hart as Overseer of the Church.

Proposed Stipulated FACTS:

1. The Stag Society applied for an exemption, as the records of Sanders County show, on or about February 23, 1999.
2. The Stag Society owns, by virtue of certain purchase documents and the deed issued as a result thereof, all of which are a matter of public record in the records of Sanders County Montana, hereinafter the subject property, to wit: the East 620 Feet of Lot Six in Section 1, Township 18 North Range 25 West consisting of approximately 13.83 acres all within the County of Sanders, and associated buildings and other appurtenances; see page 1, ¶3, 2nd sentence, 1st clause therein of the letter submitted to this board by Mr. Byford, dated May 18, 2000.
3. The Stag Society is a Church organized pursuant to the Holy Scriptures, subservient to the Laws of the Creator of the Universe whose office, "*The office of the Presiding Patriarch* (Overseer) and his successors, a corporation sole over/for an unincorporated religious Scriptural society, in the nature of Ecclesia, The Stag Society" has been duly recognized pursuant to the law of the State of Nevada as evidenced by documents submitted to Mr. Byford's office; see page 1, ¶4, 2nd sentence, 1st clause therein, of Mr. Byford's letter to this board dated May 18, 2000.
4. Without regard as to the specifics, Mr. Hart in his capacity as overseer of the Church, supplied certain information to Mr. Byford and his office, all of which was relevant and accepted by Mr. Byford.
5. Without regard to the specifics, Mr. Byford or his superiors in the Montana Department of Revenue felt or still feels, that there was or still is additional information required to be submitted by the Church to allow for a proper determination of exemption of Church Property.

End, Stipulated Facts

The nature of the dispute can be properly categorized, without danger of oversimplifying or excluding necessary elements, into two main categories.

First is the category of what EXACTLY constitutes a "USE TEST." These words, "use test" have been referred to by Mr. Byford on several occasions, and on each occasion I have respectfully asked Mr. Byford for the exact components of a "use test." Let me give you an example of why I would ask for such a thing. Hypothetically speaking, because to date no one from the State of Montana has told me what exactly comprises a "use test." Just one possible "use test" question would be: "How many members does your church have?" If I answered 19, but the state had a minimum of 20, I might fail the test. On the other hand, if I knew that 20 was the minimum, I might decide to recruit one more member and thereby meet the minimum requirement. Without such specific information, I can only

assume that the state of Montana intends to hold my answers, should I choose to answer, up to arbitrary and capricious standards, the criteria about which are secret.

The second category is that regarding the question of constitutionality. In its most general sense, the question presented in this instant matter, is exactly the same one I've asked Mr. Byford on several previous occasions – and by the way, I notice, by its conspicuous absence from his letter to this board of May 18, 2000, that he again fails to address, in any manner whatsoever, the issue of constitutionality. This issue, simply stated is: “Does the State of Montana have the authority to inquire into the habits, practice, dogma, precepts, laws and jurisdiction of a Church, and specifically a Church which has been organized in a manner like the Church in question herein, the Stag Society, which is NOT a state incorporated church?”

You see, it doesn't matter whether there is or isn't a statute, the existence of which Mr. Byford intimates although I notice he is extremely careful to NOT actually state, which controls the activities and organizational structure of a Church. All statutes are required to be in conformity with the Constitution of the State and also in conformity with the Constitution for America. So we must look FIRST to the Constitutions to determine if fundamental authority exists. ONLY then would we ever be able to get to the specific issues which might be addressed within such statute such as a “use test.”

It is the position of the Stag Society and myself as Overseer thereof, that the Constitutions specifically prohibit state inquiry into the practices and organization of our Church. It is further the position of the Stag Society and myself as Overseer thereof, that the ruling of this honorable board must be confined to the issue of constitutionality of such requirement, as anything less will simply generate more lost time and costly litigation while the issue is brought before state or federal courts for a definitive ruling thereon.

Mr. Byford has requested information on a variety of topics excluded by virtue of the Constitutional prohibition into church inquiries. I have on several occasions referred him to the Internal Revenue Code. I made no claim that the internal revenue code might be uniformly controlling, but my references to it were in the nature of, *even the internal revenue service, the most intrusive agency ever created, cannot intrude into prohibited areas of inquiry about our Church.* Mr. Byford wants to know, for just an example, if I am a member of the “clergy.” I don't have any idea what he means by “clergy.” Is he using some definition from Montana Code? Or from Montana Dept. of Revenue rules or rulings? Or from some legal dictionary, or his own private understanding of the word? Or what: SPECIFICALLY?

Then the problem is made more complex because I provided him a truthful and complete answer, but it was, for some reason, not acceptable. I suspect because the definition of the word “Clergy” was not known to either me or Mr. Byford. But the fact is, I am the head of this Church and I am the ONLY head of this Church. Is the Pope a member of Mr. Byford's “Clergy?” How about the Dali Lama of Tibet, is he a member of Mr. Byford's “Clergy?” How about the King of Thailand who, in his capacity as king, also is the head of the Buddhist religion in his country, a man to whom **ALL** Thai Buddhists bow, is he a member of Mr. Byford's approved list of “Clergy?” If not, are they to be excluded from Mr. Byford's “approved list of Churches?” Is the problem herein becoming more clear?

How would Mr. Byford ever know if I submitted documentation certifying that I was a member of the clergy? Is he capable of recognizing such documents as true or false? If he were to arbitrarily deny such documents as false or insufficient, who could make a determination as to their validity and sufficiency unless the state became intimately involved in the affairs and activities and practices of our Church, an endeavor which I submit, is strictly prohibited by law.

The above small example of the business of determining whether I am or am not a member of some yet-to-be-defined “CLERGY” is seen to propose the answering of questions which the state cannot support or provide an authority for asking. Further, the answering of such a question is impossible given the complete lack of information surrounding the terms, the definitions and approving authority.

Mr. Byford has asked, for another example, “Which of the cabins is used for actual religious worship.” However, I have already properly responded by telling him that the only activities on this property are proper Church activities. Only one of my problems with such a question is, how exactly would Mr. Byford like to qualify “religious worship?” How would he propose to determine if our form of worship meets his arbitrary and capricious definition? I say arbitrary and capricious because the supreme law of the land has already stated that there shall be “NO LAW respecting an establishment of religion, or prohibiting the free exercise thereof....” And therefore we know that the state of Montana has no such law and if it did, it would be void. So if I were to submit a specific answer, how EXACTLY would Mr. Byford know whether our form of worship met his standard? Does he have it written down somewhere and if so, why, when asked, did he not provide it?

Now perhaps you can see why the position of The Stag Society has been, is, and will continue to be, that the separation of Church and State are mandatory, that this doctrine is absolutely controlling in this instant matter and that this honorable board must uphold it firmly.

Offers of Evidence:

- A) As was stated by myself in my letter to Mr. Byford on May 18, 1999 which letter and the contents was acknowledged by Mr. Byford in his letter to this board of May 18, 2000, the property is used exclusively for church purposes. I make this statement herein with full knowledge of the penalties of perjury and false swearing and I offer this statement as evidence of the use of the property.
- B) As I wrote in my letter to Mr. Edward Thompson, a copy of which was forwarded to Mr. Byford per his admission at page 2, ¶2, 1st clause therein, we take the position that the doctrine of the separation of Church and State is immutable:

“It is our opinion, but please feel free to correct us if we are wrong, that church activities, gatherings, personnel and property are all fully protected from inspections or determinations of fitness by the state. As we’ve stated, if we are wrong, by all means please let us know and give us knowledge of what law or laws we would be in violation of if we denied you access to our Church for any purpose other than for worship. The American Constitution states that, “*Congress shall make NO LAW respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech,*” If the state of Montana has strongly held beliefs to the contrary we will respect them; but we have the absolute right to know precisely what these contrary beliefs are, do you not agree?”

I submit the foregoing as testimonial evidence herein with full knowledge of the penalties of perjury and false swearing and I offer the foregoing as evidence of the good faith nature of my requests to be informed as to the nature and authority for inquiries into our church.

- C) No inquiry by me regarding where Mr. Byford has determined he has the authority to ask questions which transgress the boundaries of the separation of Church and State has EVER been answered.

I submit the foregoing as testimonial evidence herein with full knowledge of the penalties of perjury and false swearing, and I offer the foregoing as evidence of the good faith nature of my requests to be informed as to the nature and authority for inquiries into our church.

- D) Mr. Byford's letter of January 20th does, finally, disclose the true nature of his inquiries. At the top of page 2, as a continuation of paragraph number 1 from page 1, Mr. Byford wrote "...as to whether the property meets the statutory requirements for exemption..." It seems clear, and it is the position of The Stag Society, that Mr. Byford's inquiry is based on attempts to obey and abide by the statutes.

The foregoing is submitted as evidence herein with full knowledge of the penalties of perjury and false swearing, and is offered as proof that even Mr. Byford knows and acknowledges that it is only in pursuit of a statutory enactment that information contrary to the constitutions is being sought. However, all statutes are required to be written to be in absolute conformity with the Constitution and any which are not are void of law.

- E) I also submit herein the following as evidence of the law in this matter and it is the position of the Stag Society that the below constitutes the law of this case and the Stag Society hereby relies upon the following cases:

- (1) "Supremacy Clause of national Constitution (Art. VI, cl 2) is not source of any national rights, but rather accords all national rights, whether created by treaty, statute, or regulation, priority when ever they come in conflict with state law." Chapman v. Houston Welfare Rights Organization (1979) 441 US 600, 60L Ed 508.
- (2) "The Constitution forbids the exercise of the regulatory police power where it would result in the destruction of rights, guaranties, privileges, and restraints excepted from the powers of government by the Bill of Rights." Travelers' Inc. Co. v. Marshall, 124 Tex 45, 76 SW2d 1007, 96 ALR 802
- (3) "A claim that action is being taken under the regulatory police power of the state cannot justify disregard of constitutional inhibitions." Panhandle Eastern Pipe Line Co. v. State Highway Com., 294 US 613, 79 L Ed 1090, 55 S Ed 1709, 55 S Ct 652
- (4) "The exercise of the regulatory police power cannot be made a cloak under which to overthrow or disregard constitutionally protected rights." Graff v. Priest, 356 Mo 401, 201 SW2d 945, cert den 332 US 770, 92 L Ed 356, 86 S Ct 83
- (5) "Each state has the power to regulate the relative rights and duties of all persons, individuals, and corporations within its JURISDICTION for the public convenience and the public good, the only limitation being that such regulations shall not prove repugnant to the provisions of the state or national Constitution." Alabama State Federation of Labor of McAdory, 246 Ala 1, 18 So 2d 810, cert dismd 325 US 450, 89 Led 1725, 65 S Ct 1384 (See also, Marbury v. Madison 5 US 137).
- (6) "An unconstitutional act is not law; it confers no rights: in (sic) imposes no duties: affords no protection: it creates no office: it is legal contemplation, as inoperative as though it had never been passed." Norton v. Shelby County, 118 US 425.

- (7) "Constitutionally protected rights cannot be frittered away little by little until the substance is gone and only the shadow remains." Olds v. Klotz, 131 Ohio St 447, 6 Ohio Ops 129, 3 NE2d 371.
- (8) "The regulatory police power, broad as it is, cannot justify the passage of a law or ordinance which runs counter to the limitations of the national Constitution." Buckanan v. Warley, 245 US 60, 62 L Ed 149, 38 S Ct 16.

Thank you for your attention to this matter and please enter this entire document into the proceeding as evidence in this matter. If you have any questions, please do not hesitate to contact me.

/s/ Stevens Lawrence; Hart, Overseer
The Stag Society
c/o Mr. David Shapel
11681 Watson Road
St. Ignatius, Montana 59864

(Document notarized on June 14, 2000 by Brenda A. Davis, Notary Public for Oregon, Commission No. 311423.)

Mr. Hart began his testimony by presenting the five proposed stipulated facts contained in the above affidavit for agreement by the DOR. Mr. Byford agreed to stipulated fact number one, that ***The Stag Society applied for an exemption, as the records of Sanders County show, on or about February 23, 1999.*** He requested the additional stipulation that it was received in the Sanders County Department of Revenue office on February 25th, and this was agreed to by Mr. Hart. Mr. Byford agreed to stipulated fact number two, ***The Stag Society owns, by virtue of certain purchase documents and the deed issued as a result thereof, all of which are a matter of public record in the records of Sanders County Montana, hereinafter the subject property, to wit: the East 620 Feet of Lot Six in Section 1, Township 18 North Range 25 West consisting of approximately 13.83 acres***

all within the County of Sanders, and associated buildings and other appurtenances;... After discussion, it was agreed that the legal description should be corrected to read "the East **820** Feet of Lot Six in Section 1, Township 18 North, Range 25 West..." rather than "620 feet" as indicated in the affidavit.

Stipulated fact number three states that ***The Stag Society is a Church organized pursuant to the Holy Scriptures, subservient to the Laws of the Creator of the Universe whose office, "The office of the Presiding Patriarch (Overseer) and his successors, a corporation sole over/for an unincorporated religious Scriptural society, in the nature of Ecclesia, The Stag Society" has been duly recognized pursuant to the laws of the State of Nevada...***, and Mr. Byford testified that the DOR will stipulate that "we would recognized you as a church. What the import of all the additional information that you have in that particular paragraph is, I will not stipulate to. I will just stipulate to that it is a church. We recognize it as a church." Following questioning by Mr. Hart, Mr. Byford further testified that he also accepts that the society has been recognized pursuant to the laws of the State of Nevada.

Stipulated fact number four states that ***without regard as to the specifics, Mr. Hart in his capacity as overseer of***

the Church, supplied certain information to Mr. Byford and his office, all of which was relevant and accepted by Mr. Byford. Mr. Byford responded that "You supplied some information to me. I don't agree that it was all relevant, and I don't agree that you provided the information that I asked for. So I can't totally stipulate to paragraph four." He agreed to stipulated fact number five, **Without regard to the specifics, Mr. Byford or his superiors in the Montana Department of Revenue felt or still feels, that there was or still is additional information required to be submitted by the Church to allow for a proper determination of exemption of Church Property.**

Mr. Hart explained that as the current overseer of The Stag Society, he is the head of the church. He is uncertain of what proof is required by the DOR to accept him as a member of the clergy. Although Mr. Byford had "listed a number of things that he feels that a member of the clergy should be doing,...I'm quite certain...that the State doesn't have an interest in the church that it can tell the church which ones of those many items they need to be doing to be considered a church, or to be considered a member of the clergy of a church." Mr. Hart testified that he had asked for, but had not received, copies of the DOR's "use test" that explains how many members are required in order

to be considered a church. He believes that The Stag Society would *"need to know what the test is going to be comprised of before we can answer the questions."* If he answered the question of how many members his church had by stating "19" and the state had a minimum of 20, he would fail the test. If he knew that 20 was the required minimum and his church had only 19 members, he would find another member before responding to the question. Mr. Hart believes that it is unconstitutional for the State to ask such questions of churches as well as to set the standards for churches.

Mr. Hart testified that The Stag Society's property, including the two cabins located on the land, are owned by the church and all of this property is used for worship. He stated that *"a church is not necessarily a building, and worship does not necessarily have to take place in a certain building or in a certain spot."* He stated that he feels that a use test *"necessarily places the state in the position of determining what a proper church is, which is strictly unconstitutional...I think the fact that they've accepted us as a church, and the requirement is that a church is a tax exempt entity, that we are tax exempt."*

Mr. Hart felt that, prior to the stipulation that The Stag Society is a church, there may have been confusion on the part of the DOR as to whether the Society was a

501(c)(3) tax-exempt organization rather than a church. On the application form for the Montana property tax exemption, Mr. Hart had explained that the Society had no Federal Internal Revenue Service Tax Exempt Status Letter because "*churches are under mandatory exceptions.*" He testified that churches are "*mandatorily exempt from getting a number*" as indicated on page 5 of Taxpayer's Exhibit 1, which quotes pertinent parts of **26 USCA 508** and **26 USCA 6033** as follows:

§508. Special rules with respect to section 501(c)(3) organizations

(a) New organizations must notify Secretary that they are applying for recognition of section 501(c)(3) status.--Except as provided in subsection (c), an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3)--

- (1) unless it has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or
- (2) for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.

(b) Presumption that organizations are private foundations.--Except as provided in subsection (c), any organization (including an organization in existence on October 9, 1969) which is described in section 501(c)(3) and which does not notify the Secretary, at such time and in such manner as the Secretary may by regulations prescribe, that it is not a private foundation shall be presumed to be a private foundation.

(c) Exceptions.--

- (1) **Mandatory exceptions.--Subsections (a) and (b) shall not apply to--**
 - (A) **churches, their integrated auxiliaries, and conventions or associations of churches, or**

§6033. Returns by exempt organizations

(a) Organizations required to file.--

(1) In general.--Except as provided in paragraph (2), every organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe; except that, in the discretion of the Secretary, any organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization.

- (2) Exceptions from filing.--

(A) Mandatory exceptions.--Paragraph (1) shall not apply to--

(i) churches, their integrated auxiliaries, and conventions or associations of churches, ...

Mr. Hart testified that he realizes the federal statutes cited do not control Montana statutes in this case, but he wanted to explain why The Stag Society did not have a tax exempt letter as requested on the Montana exemption form.

In response to Mr. Byford's questions, Mr. Hart testified that he is currently residing in Montana but does not have a Montana driver's license and is not registered to vote in Montana. He has "*houses in various places,*" and he visits his Montana property "*when our church business does not take us to some other area.*" In response to questions from the Board, Mr. Hart stated that The Stag Society has members "*in several states.*" His position as overseer is comparable to the Pope in the Catholic Church or the King in the Church of England. Although the Articles of Incorporation were filed in the State of Nevada, The Stag Society has no physical location in Nevada. It does have a physical location in Oregon. At this time, Mr. and Mrs. Hart spend more time in Oregon than they do in Montana, because the subject property has no water other than what they pump out of the river or get from the neighbors. They are in the process of building roads and selecting a location for a

well. He stated that *"Highway 200 divides the property so it's not hard to inspect. You can stop and look any time you want."* He contends that the entire property is used for religious worship.

Mr. Hart concluded his testimony by stating that the position of The Stag Society is that *"the State has no interest in determining whether the church meets their standards or not...If you're going to set down a requirement that we have x number of members and that we meet x number of days a year or a month or whatever that standard is, then we have a problem. And I think that's the entire problem here."*

DOR'S CONTENTIONS

As stated in Taxpayer's Stipulated Fact #5 (Taxpayer's Exhibit 1, page 2), Mr. Byford "or his superiors in the Department of Revenue" require additional information from The Stag Society in order to determine whether the subject property qualifies for an exemption. Mr. Byford testified that this required information includes Mr. Hart's qualifications as a member of the clergy. Mr. Byford stated that in most denominations, members of the clergy are persons who have been ordained or gone through *"some kind of process"* to qualify them and give them *"some authority within the church above and beyond what a layman would*

have," and they generally perform such duties as funerals, weddings and worship services. Mr. Byford testified that he processes between 500 and 1,000 applications per year for exemptions, with approximately 80% of them being church organizations. He has not had to question whether or not the applying organizations were actually churches, because *"it's usually pretty obvious. They have a standard church building, they're a member of one of the major denominations, and they have a process for choosing a member of the clergy,...who runs the church, conducts the worship services and has the authority to do all the things that the dictionary would indicate a clergy member would do."*

DOR's Exhibit A consists of three photographs of the subject property, which show two cabins on the land. Mr. Byford explained that he had unsuccessfully attempted to determine from Mr. Hart which building was used for religious worship and which was occupied by a member of the clergy in order to properly apply the exemption statute, §15-6-201(1)(b), MCA: ***"(1) The following categories of property are exempt from taxation: (b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;"***

He testified that since the statute allows exemption for land that is "reasonably necessary for the convenient use of the building," the DOR must determine how much of the land is exempt. "Normally with a cabin like that, it would be somewhere between a half acre and an acre that would be exempt with the cabin, unless you have a very large congregation and you need a large parking lot, then it could be larger than that."

Mr. Byford cited the following relevant court cases and previous State Tax Appeal Board decisions upholding the position of the Department of Revenue: **Old Fashion Baptist Church v. Department of Revenue**, 206 Mont. 451; **Flathead Lake Methodist Camp v. Webb**, 144 Mont. 565; **Cruse v. Fischl**, 55 Mont. 258; **Church of Christ v. DOR**, SPT-1984-22; **Emmanuel Baptist Church v. DOR**, SPT-1985-3; **Belt Community Church v. DOR**, SPT-1987-17; **Fellowship Baptist Church v. DOR**, SPT-1990-6; **Trinity Baptist Church v. DOR**, SPT-1990-7; and **Westside Baptist Church of Billings v. DOR**, SPT-1999-2.

Mr. Byford presented the Articles of Incorporation of The Stag Society as DOR's Exhibit B. He concluded his presentation by stating that the DOR "is required to administer the state statutes as written...In the case of churches, the statute is pretty clear that it only applies to buildings that are used for actual religious worship or

residences of the clergy, along with adjacent land reasonably necessary for convenient use of those buildings. I don't believe that The Stag Society has proven that they meet the requirements of this statute as far as the use is required."

BOARD'S DISCUSSION

The Board considered the post-hearing submissions: (1) copies of the court and STAB decisions cited by Mr. Byford; (2) DOR's post-hearing brief dated October 13, 2000, in which the DOR responded to the court cases cited by The Stag Society; and (3) The Stag Society's reply to the DOR's brief.

Relevant points made by the DOR in the cases they cited were as follows: (1) In ***Cruse v. Fischl***, 55 Mont. 258, the Montana Supreme Court held that "*tax exemptions must be construed strictly in favor of taxation and against exemption.*" (2) In ***Flathead Lake Methodist Camp v. Webb***, 144 Mont. 565, the Court ruled that property owned by the Methodist Church and used for a summer camp was entitled to an educational, rather than a religious, exemption. Religious education was considered exempt as an "*educational purpose*" and not as "*actual religious worship.*" (3) In ***Old Fashion Baptist Church v. Department of Revenue***, 206 Mont. 451, the Court held that "four lots adjacent to the church

and parsonage were **not reasonably necessary** for convenient use of the church buildings, and **exemptions for them could not be granted.**" (Emphasis added) In the six STAB decisions cited by the DOR: *Church of Christ v. DOR*, SPT-1984-22; *Emmanuel Baptist Church v. DOR*, SPT-1985-3; *Belt Community Church v. DOR*, SPT-1987-17; *Fellowship Baptist Church v. DOR*, SPT-1990-6; *Trinity Baptist Church v. DOR*, SPT-1990-7; and *Westside Baptist Church of Billings v. DOR*, SPT-1999-2, STAB upheld the DOR's decisions relating to exemptions for **only** the buildings and the land specifically designated in §15-6-201(1)(b), MCA: *...(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings*" (emphasis added).

At the request of Mr. Byford, the DOR's legal department reviewed the cases cited by The Stag Society (Taxpayer's Exhibit 1, "Affidavit," pages 5-6), which were presented to support The Society's argument that "*the Constitutions specifically prohibit state inquiry into the practices and organization of our Church.*" (Affidavit, page 3) The DOR's post-hearing brief, prepared by Tax Counsel Stephen R. McCue, states that "**None of the cases cited by**

the Stag Society have any bearing on the issue at hand in this case..." Other portions of the post-hearing brief relevant to the Board's discussion are reprinted as follows:

SECTION 15-6-201, MCA, EXEMPTING CERTAIN CATEGORIES OF PROPERTY FROM TAXATION, DOES NOT VIOLATE THE UNITED STATES OR MONTANA CONSTITUTIONS, NOR DO STAB OR DOR VIOLATE THE STAG SOCIETY'S CONSTITUTIONAL RIGHTS BY INQUIRING INTO THE PARTICULARS OF THE USE OF THE PROPERTY FOR CHURCH PURPOSES...

Section 15-6-201, MCA, provides in relevant part: *(1) The following categories of property are exempt from taxation... (b) buildings, with the land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings...*

The statute by its terms requires proof that the property is being put to the use specified in the statute. A mere assertion by the Stag Society that it is in fact using the property for church purposes, without more, is not enough to carry the Stag Society's burden of proof. The Stag Society must show that the property is "used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings..." The Stag Society failed to carry its burden of proof because it offered nothing more at the hearing in this case than its bare assertion that it is a church, without offering any evidence as required by §15-6-201(1)(b), MCA, to support its assertion.

The Stag Society maintains that it need not offer such evidence because §15-6-201(1)(b), MCA, violates both the United States and Montana Constitutions... The Stag Society cites several United States Supreme Court and lower court cases in support of its argument that it is free from any governmental scrutiny whatsoever in the matter of whether it is utilizing its property for church purposes...

None of the cases cited by the Stag Society have any bearing on the issue at hand in this case as set forth above. It is well settled that the State of Montana may inquire into the use of the premises for church purposes under §15-6-201(1)(b), MCA, in order to determine if the property is exempt from property taxation. Such an inquiry, as conducted in this case, does not run afoul of either the United States or Montana Constitutions. In **Old Fashion Baptist Church v. Montana Department of Revenue**, 206 Mont. 451, 671 P.2d 625 (1983), the Montana Supreme Court inquired into the use of property for church purposes under §15-6-201(1)(b), MCA, and noted in doing so that exemptions from tax such as this statute are expressly authorized by Article VIII, section 5, of the Montana Constitution... The mere fact of ownership by a church is not sufficient to qualify the property for the exemption...

The First Amendment of the United States Constitution also does not bar the State of Montana from inquiring into the activities of religious organizations such as the Stag Society in order to administer the tax laws. Such an inquiry is often necessary if the laws are to be fairly enforced...

On November 27, 2000, Mr. Hart filed The Stag Society's eleven-page reply to the DOR's brief. We disagree with the Society's contentions that "all relevant evidence and testimony was submitted and is currently before this board proving and attesting to its activities and use of the property as a church;" and that "every single question the State of Montana has asked regarding whether the property will be used for church purposes, and if so, how much of the property will be so used, has been forthrightly answered with alacrity." The Board does **not** know what activities are conducted on the property nor how the land and buildings are used for "actual religious worship" and "residences of the clergy," despite Mr. Hart's contention that "it is uncontested that both testimony and the application for exemption state that the entire property and all of its buildings are involved in the activities of the church and its religious pursuits. Mr. Hart further contended that "the state has failed to introduced a single shred of evidence or testimony which would indicate, much less pøve, that the Society does not use the property for church purposes, or that it uses only a subset of the property for church purposes." The Stag Society brought this appeal to the Board and, therefore, has the burden of proof rather than the Department of Revenue, as Mr. Hart is suggesting. The Stag

Society offered no testimony, no exhibits and no responses to Board and DOR questions during the hearing to substantiate their claim that the subject property qualifies for a religious exemption.

The Board agrees with the Society's contention that the DOR's "use test" involves arbitrary criteria. Mr. Hart states, on page 2 of the reply brief, that *"this board heard testimony from Department of Revenue employees that there are NO STATUTES or RULES or REGULATIONS or other writings which are uniformly applied to determine suitability; testimony taken stated that indeed the application of such a "use test" involved the use of "ARBITRARY CRITERIA."* Neither the statutes nor the administrative rules contain the actual term **"use test,"** nor do they define the terms **"church," "actual religious worship," "clergy," "residences of the clergy,"** and **"reasonably necessary for convenient use** of the buildings." That the term itself and the specifics of a "use test" are not clearly delineated in the relevant statutes and administrative rules is a valid concern, as expressed by Mr. Hart. Mr. Byford's April 28, 1999 letter to The Stag Society requested information that included *"proof that occupant of the parsonage is a member of the clergy (if this is a parsonage) and whether the building(s) is used for: a) a parsonage, b) religious worship services (if so, when are*

they held and how many members do you have), or c) other purposes (please describe in detail)? (Factual Background, #4) The Board notes that neither the statute nor the administrative rules refer to a "parsonage," which is defined in the Random House Webster's College Dictionary, 1997, as "*the residence provided by a parish for its pastor.*" By definition, a "parsonage" could be different from a "residence of the clergy," which might be a home owned by, paid for, and lived in by the clergy member, rather than one provided by a parish.

Mr. Byford again asked questions of Mr. Hart regarding church membership in his letter of January 20, 2000, stating "*... I still need to know how many members are in your Church, how often you hold worship services, and how many members usually attend these services in order to determine if the property qualifies for exemption under this use requirement.*" (Factual Background, #10) Since the statute and administrative rules do not provide standards for religious worship services, including how often they are to be held, or the number of church members required, the Board questions how such information could be objectively used by the Department of Revenue.

If there are no stated standards or definitions for churches, clergy, worship, membership in the church, numbers

of parishioners required, and amount of land that is considered necessary for "convenient use" of the buildings, how can the Department of Revenue accurately and impartially determine if an entity requesting a religious exemption is or is not entitled to the exemption? In the cases cited by the DOR, this Board and the courts have upheld the determinations of the DOR despite the "arbitrary criteria," but the Board believes the DOR might consider adopting administrative rules or written department policies that are more specific. The Board takes notice of prior testimony relating to land area exemptions in ***Trinity Baptist Church v. DOR***, SPT-1990-7, "The DOR emphasized that each church property proposed for exemption is judged on its own circumstances which results in varied proportions, or area sizes, that receive approval. Such consequences are inevitable and are not evidence of bias or inconsistency by the DOR."

The DOR stipulated that The Stag Society is a church. Mr. Hart testified that he is the overseer, or the head of the church, so the Board could assume that he would be considered a "member of the clergy." The statute provides for an exemption for "residences of the clergy," but Mr. Hart did not specify which, if any, of the two buildings located on the subject land might be used as a residence. In

fact, Mr. Hart testified that he had lived in Oregon prior to purchasing the subject property, he does not have a Montana driver's license, and he is not registered to vote in Montana. §1-1-215, MCA, defines "residence" as follows:

1-1-215. Residence—rules for determining. Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

(1) It is the place where a person remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.

(2) There may only be one residence. If a person claims a residence within Montana for any purpose, then that location is the person's residence for all purposes unless there is a specific statutory exception.

Mr. Byford asked Mr. Hart if he "*had a house in another location that you're living in?*" and Mr. Hart responded, "*I didn't say that. I'm like a lot of people; I have houses in various places.*" (STAB hearing transcript, page 44) The Board is not convinced that either of the two subject buildings is used as Mr. Hart's residence, thereby qualifying it for exemption as a "*residence of the clergy,*" nor is the Board convinced that either or both of the two buildings are used for "*actual religious worship.*" The Board finds that the taxpayer failed to present sufficient evidence to sustain the burden of proof on appeal; and, therefore, the appeal for tax exemption on the subject property is denied and the decision of the DOR is affirmed.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301, MCA.**

2. **1972 Montana Constitution, Article VIII, Section 5(1)(b).** "The legislature may exempt from taxation ... places for actual religious worship..."

3. **§15-6-201, MCA. Exempt categories.** (1) The following categories of property are exempt from taxation: (b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings.

4. The appeal of the taxpayer is hereby denied and the decision of the Department of Revenue is affirmed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be maintained on the tax rolls of Sanders County by the local Department of Revenue office at the value determined by the DOR. The appeal of the taxpayer is therefore denied, and the decision of the DOR denying exemption on the subject property for tax year 1999 is affirmed.

Dated this 20th day of December, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JAN BROWN, Member

JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of December, 2000, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

The Stag Society
Stevens Lawrence; Hart, Overseer
P. O. Box 104
Paradise, Montana 59856

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

Sanders County Appraisal Office
P. O. Box 319
Thompson Falls, Montana 59873

DONNA EUBANK
Paralegal