



June 25, 2010

Via Fax and Regular Mail

Ms. Lynne Thrower
Associate Counsel
Alabama Community College System
Department of Postsecondary Education
P.O. Box 302130
Montgomery, AL 36130-2130

Re: Bethany Divinity College & Seminary

Dear Ms. Thrower:

The Alliance Defense Fund has been retained to represent Bethany Divinity College & Seminary (“Bethany”). This letter is in response to your letter to Dr. H.D. Shuemake of June 2, 2010. In your letter, you state that Bethany is not authorized to offer programs of study of associate or bachelor degree levels and you demand that Bethany remove certain religious degree offerings from its catalog and website. Because we believe that Bethany is within its constitutional and statutory rights to structure its ministry program as it chooses, Bethany respectfully declines your request. As stated below, Bethany has provided an updated catalog that demonstrates its exempt status under Alabama law.

By way of history, Bethany has been in existence since 1982. Bethany’s Certificate of Incorporation states its purpose plainly as, “to establish and maintain a Religious institution, to provide advanced training in Bible, Theology, Christian Education and Pastoral Ministry, and as such **to prepare students for full or part time Christian service.**” (emphasis added). Since its beginning, Bethany has offered Associate, Bachelor, and Graduate degree programs, all religious in nature and all calculated to prepare students for Christian ministry.

Because Bethany was operated on a nonprofit basis and offered “only courses or programs of study in the performance of or preparation for the ministry of any established church, denomination, or religion,”¹ Bethany was granted a Private School Certificate of Exemption by the Alabama Department of Education on February 17, 1982.²

The State of Alabama Department of Education conducted a site visit of Bethany in 1983. The

¹ Ala. Code §16-46-3(a)(1) (1980).

² The Certificate was granted under the name “Bethany Bible College.” Bethany’s name was officially changed to Bethany Divinity College and Seminary in 2002.

site visit found that “the school was legitimate and honorable. There have been no complaints against the school and no incidents have arisen to cause concern for its theological position, effectiveness, **nor acceptability of its degrees.**”³ (emphasis added). It is important to note that the Certificate of Exemption originally issued to Bethany has never been revoked and states on the face of the Certificate that it shall “remain in effect indefinitely.”

In 1995, Bethany decided to voluntarily seek a private school license from the State of Alabama in order to enhance its religious mission. Bethany applied for and was granted a private school license pursuant to Alabama Code §16-46-3(d) which states that an exempted private school may “**voluntarily** request to be licensed...” (emphasis added). It is important to note that Bethany was never required at any time by any Alabama Code or regulation to obtain a private school license as its program had not changed. Bethany has always met the requirements for exemption from licensure under Alabama Code §16-46-3(a)(1). Bethany’s decision to voluntarily request and obtain a private school license did not somehow convert it to a school required to be licensed by the Alabama Code.

As you are well aware, in 2004, the Alabama legislature amended the Code requirements for the licensing of private schools. This, as you are also aware, resulted in new regulations and guidelines adopted in 2008 for schools that were licensed as private schools by the State. Bethany initially attempted to comply with the new requirements⁴ but came to the conclusion that compliance with the new requirements would so alter its ministry as to destroy the very purpose of the school.⁵ The reasons these new requirements would alter and harm Bethany’s purpose were explained to you in Dr. Shuemaker’s letter of May 20, 2010. Bethany has always existed for the purpose stated in its Articles of Incorporation, “to prepare students for full or part time Christian service.” Thus, because the new regulations and requirements for licensing would drastically alter and greatly harm Bethany’s purpose and mission, Bethany decided voluntarily to relinquish its private school license. That voluntary relinquishment was communicated to you in Bethany’s letter of May 20, 2010.

Bethany was never required under Alabama law to obtain a private school license. It met the requirements for exemption when it was first started and those requirements for exemption have not changed in the Alabama Code since that time. Nor has Bethany’s purpose or program

³ Letter dated November 28, 1983, from Joe Miller, Coordinator Accreditation and Licensure Regulatory Services of the Alabama Department of Education.

⁴ This process of initially attempting to comply involved numerous levels of correspondence with your office and spanned a significant time period, all culminating in your recent letter to Bethany of June 2, 2010.

⁵ To retain its private school license, Bethany was required to offer purely secular courses of study to meet a template of education promulgated by the State. Requiring Bethany to list and offer purely secular courses that have nothing to do with its religious mission is pure state control of Bethany’s religious program and mission. This is excessive entanglement of the state with religion in violation of the Establishment Clause of the United States Constitution.

changed since that time.⁶ The Alabama Code §16-46-3(b) states specifically that, “Any private school exempted in this section shall retain the exempted status as long as the conditions of exemption remain valid.” Therefore, it is Bethany’s position that it retains its exemption that was previously recognized by the State in 1982.

Your letter of June 2, 2010, states that “Bethany is not authorized to offer programs of study of associate or bachelor degree levels.” And you demand that Bethany cease offering all of its Associate and Bachelor programs as listed in religion, ministry, theological studies, and Bible. You request that Bethany provide you with an updated catalog excluding these degree programs within thirty days of the date of your letter. As stated above, Bethany respectfully declines your demand to alter its religious degree programs.

Enclosed, you will find an updated catalog from Bethany. You will note that the courses and degrees offered are all calculated to fulfill Bethany’s purpose of preparing its students for Christian ministry. The fact that Bethany calls its degree programs Associate of Arts in Religion, Bachelor of Arts in Religion, Bachelor of Arts in Ministry, Bachelor of Theological Studies, or Bachelor of Applied Science in Bible does not make those programs and degrees secular or subject to licensure. Further, every degree awarded by Bethany contains an appellation identifying it as a purely religious degree. There is no requirement in either the Alabama Code or the Department’s regulations regarding how a degree program should be named.⁷ Therefore, Bethany will continue to offer its degree programs and call them by the same names it did when it operated under its Certificate of Exemption.⁸ Bethany will continue to accurately publicize, both on its website and in its catalog that it operates within the State of Alabama as an exempt private school.

It is important to remember that the State of Alabama promulgated the exemption statute for religious programs of study in order to protect the constitutional rights of religious schools that were operating to prepare students for Christian ministry. As the United States Supreme Court stated in *Lemon v. Kurtzman*, 403 U.S. 602, 625 (1971), “Under our system the choice has been

⁶ Bethany changed its course offerings during its attempt to retain the private school license it obtained in 1995. This was part of Bethany’s voluntary attempt to comply with the new requirements for private school licensure promulgated by the State in 2004 and the new regulations promulgated by the Department in 2008. Despite these changes in the course offerings, Bethany’s purpose, mission, and programs have not changed since its inception in 1982.

⁷ The Texas Supreme Court recently held that a state statute that restricted what a religious seminary could call its degree programs was unconstitutional under the Free Exercise Clause of the United States Constitution. The Court specifically stated, “The State may not deny a religious program of study clearly denominated as such the use of all words capable of describing educational achievement.” *HEB Ministries, Inc. v. Texas Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 661 (Tex. 2007). Further, a requirement that an exempt school must not offer a religious degree program and call it such would violate Alabama’s Religious Freedom Amendment to the Alabama Constitution.

⁸ I will again note that, under Alabama Code §16-46-3(b), Bethany never lost its exempt status and continues to remain exempt as the conditions of exemption remain valid and have not changed.

made that government is to be entirely excluded from the area of religious instruction....” Thus, when the state involves itself deeply in regulating religious instruction, it runs the risk of violating both the Free Exercise Clause of the United States Constitution and the commands of the Establishment Clause not to demonstrate a preference for one religion over another or to become excessively entangled with religion.⁹ Accordingly, “setting standards for a religious education is a religious exercise for which the State lacks not only authority but also competence, and those deficits are not erased simply because the State concurrently undertakes to do what it is able to do—set standards for secular educational programs.”¹⁰ The safest course of action is for the state to remain “entirely excluded” from the area of religious instruction.¹¹

In light of the foregoing, Bethany requests that your Department either recognize that Bethany retains its exemption it first received from the State Department of Education in 1982, or issue it an updated Certificate of Exemption.

If you have any questions regarding this matter, please do not hesitate to contact me. We look forward to confirmation from your office of Bethany’s exempt status.

Sincerely,



Erik W. Stanley
Senior Legal Counsel

Enc.

cc: Will Phillips, Greene & Phillips
Bethany Divinity College & Seminary

⁹ And again, such intrusion would violate Alabama’s Religious Freedom Amendment to the Alabama Constitution.

¹⁰ *HEB Ministries v. Texas Higher Educ. Coordinating Board*, 235 S.W.3d 627, 643 (Tex. 2007) (emphasis in original).

¹¹ The Establishment Clause forbids government entities from “trolling through...an institution’s religious beliefs.” *Mitchell v. Helms*, 530 U.S. 793, 828 (2000). As the Tenth Circuit recently recognized, this prohibition originated in the context of religious education and has generally “been expressed in terms of a prohibition of ‘excessive entanglement’ between religion and government.” *Colorado Christian Univ. v. Weaver*, 534 F.3d 1245, 1261 (10th Cir. 2008). “Properly understood, the doctrine protects religious institutions from governmental monitoring or second guessing.” *Id.*



July 28, 2010

Ms. Lynne Thrower
Associate Counsel
Alabama Community College System
Department of Postsecondary Education
P.O. Box 302130
Montgomery, AL 36130-2130

Re: Bethany Divinity College & Seminary

Dear Ms. Thrower:

I am in receipt of your letter of July 13 and appreciate your willingness to work with Bethany Divinity College and Seminary. In your letter, you request some additional information from Bethany which I have enclosed and will address below.

You suggest in your letter that a disclaimer be posted conspicuously on Bethany's website, degree awards and other written recruiting materials. I would like to draw your attention by way of reminder to Bethany's updated catalog provided to your office in my last correspondence where Bethany makes it very clear, on page 31, that it is not an accredited or licensed institution. Bethany also makes that very clear on its website. Nevertheless, Bethany has updated its website to include the following statement:

Bethany Divinity College and Seminary is a religious institution dedicated to educating pastors, missionaries, evangelists, Christian counselors and other Christian workers, providing them with opportunities to acquire the appropriate skills to carry on the work of their particular ministries. Therefore, all degrees issued by Bethany are exclusively religious and should not be confused with degrees issued by secular institutions of learning. Moreover, the programs of study offered by Bethany are not particularly intended to advance persons in the secular field of employment.¹

Bethany also has updated its Catalog to make it clear that its degrees are religious in nature. On page 31 of its catalog, Bethany has inserted the statement, "Bethany offers only courses or programs of study in the performance of or preparation for religious ministry."

You also request in your letter that Bethany provide more specifics regarding the appellation on its degrees that the degree is a religious degree. To that end, I have included a copy of a generic diploma that demonstrates that the degree awarded is a religious degree. You will note that the

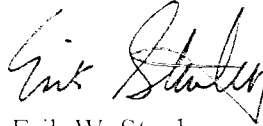
¹ The statement appears at the following link - http://www.bethanybc.edu/academics/general_statements.html (emphasis added). A printout of the website page is also enclosed with this letter.

name of the degree awarded is a Bachelor of Arts in Religion, thus denominating the degree as a religious degree. You will also note that the degree conferred is labeled as a "Religious Degree." This generic diploma is what Bethany confers on all students who complete the required program of study.

I trust that this information is helpful to your office in resolving your concerns. In light of the foregoing, Bethany renews its request that your Department either recognize that Bethany retains its exemption it first received from the State Department of Education in 1982, or issue it an updated Certificate of Exemption.

If you have any questions regarding this matter, please do not hesitate to contact me. We look forward to confirmation from your office of Bethany's exempt status.

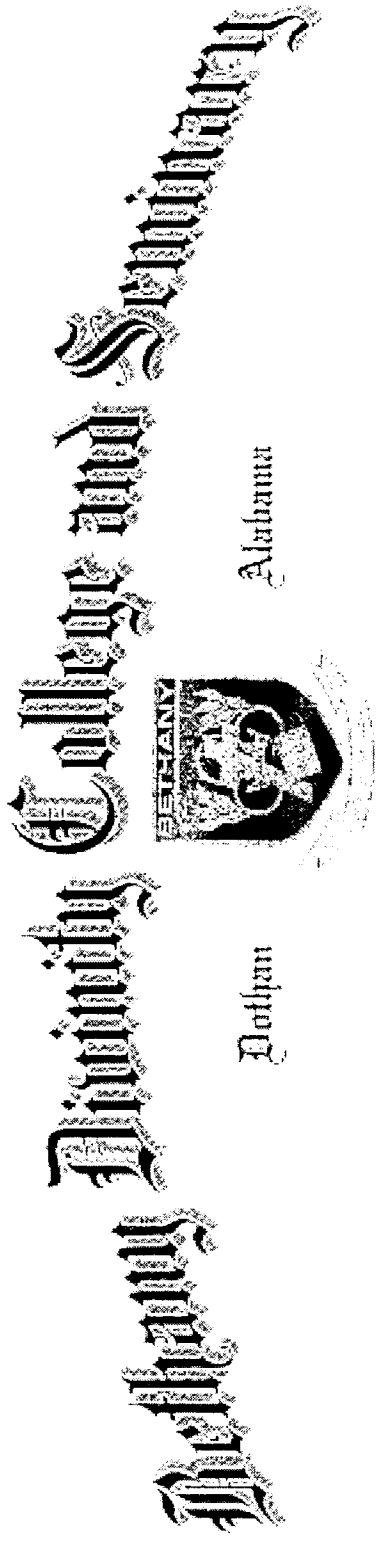
Sincerely,



Erik W. Stanley
Senior Legal Counsel

Enc.

cc: Will Phillips, Greene & Phillips
Bethany Divinity College & Seminary



Having Satisfactorily Completed All The Requirements Of This Institution

Bethany College

Upon The Recommendation Of The Faculty Hereby Confers Upon

John Doe

The Religious Degree Of

Bachelor of Arts in Religion

(Concentration - Bible)

With all honors, rights and privileges appertaining to that degree.

In Testimony Whereof, the seal of Bethany Divinity College and Seminary together with the signatures of the proper officials have been duly affixed

A. C. Crampton

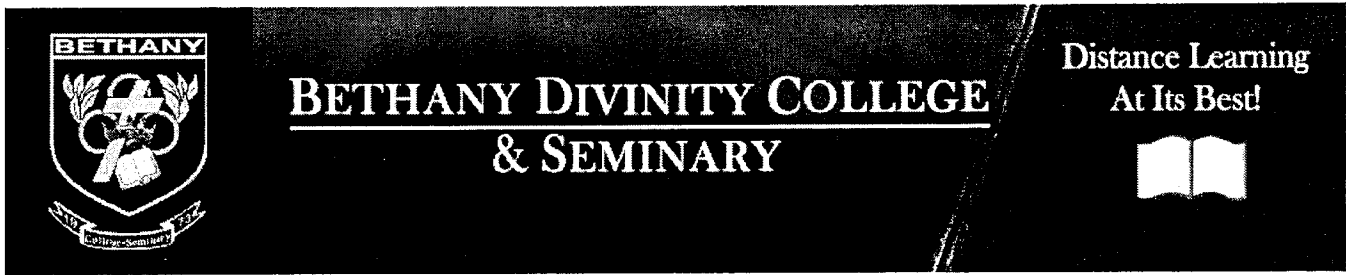
CHANCELLOR

Carl W. Warden

DEAN OF STUDENTS

E. H. Sherman, Jr.

ACADEMIC DEAN



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Welcome

From the Chancellor
Dr. H.D. Shumake



Bethany Divinity College & Seminary
2573 Hodgesville Rd.
Dothan, AL 36301
Tel: 334-793-3189
Fax: 334-793-4344

Students who plan to teach should be aware that, since teacher certification requirements vary from state to state, Bethany assumes no responsibility for such certification. However, programs offered by the School will be an important component in the preparation for teaching in a Christian Day School. Those studying in Christian Counseling should likewise be aware that licensure regulations differ from state to state. Bethany's program in Christian counseling provides an excellent background for students planning to be professional Christian counselors.

The courses of study offered at Bethany are of college and seminary excellence, providing students with one of the most comprehensive off-campus Bible and Ministerial Educational courses available. Through Bethany's programs, thousands of men and women have been prepared for vocations in the Church and para-Church Ministries.

To further enhance their educational experiences, students may attend on-site courses, seminars, symposiums, and workshops. These are available at the main campus in Dothan, at the Albany Campus in Georgia, through the Canadian Office at Clarendville, Newfoundland, and elsewhere. For those who find the information super highway a daily part of life, additional instruction through on-line classes is available. Bethany stresses the academic and strives to add the practical.