

2010

Gregory A. Lowrey v. Workforce Appeals Board, Utah Department of Workforce Services, and Jacklyn Emmett Johnson : Brief of Respondent

Utah Court of Appeals

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Gregory A. Lowrey; Petitioner Pro Se.

Jacklyn Emmett Johnson; Co-Respondent; Amanda McPeck; Attorney for Respondent.

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IN THE UTAH COURT OF APPEALS

GREGORY A. LOWREY

:

Petitioner/Appellant,

.

Case No. 20190795-CA

v.

:

WORKFORCE APPEALS BOARD,
UTAH DEPARTMENT OF
WORKFORCE SERVICES, AND
JACKLYN EMMETT ROBINSON,

:

Priority No. 7

:

Respondents.

BRIEF OF RESPONDENT

Petitioner for Review of a Decision of the
Workforce Appeals Board of the
Department of Workforce Services,
State of Utah

GREGORY A. LOWREY
521 SAINT LOUIS STREET
BERNDALE MT 59210

JACKLYN EMMETT ROBINSON,
600 SPURLOCK ST
ELEGANT GROVE UT 84002-715

Petitioner Pro Se

Co-Respondent

AMANDA MCCLURE #10768
140 EAST 300 SOUTH
SALT LAKE CITY UT 84115-0244

Attorney for Respondent
Workforce Appeals Board of the
Utah Department of Workforce
Services

FILED
UTAH APPELLATE COURTS

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Petition for Review of a Decision of the
Workforce Appeals Board of the
Department of Workforce Services,
State of Utah

GREGORY A. LOWREY
621 SAINT LOUIS STREET
FERNDALE MI 48220

Petitioner Pro Se.

JACKLYN EMMETT JOHNSON
640 SPRUCE ST
PLEASANT GROVE UT 84062-3715

Co-Respondent

AMANDA McPECK #10768
140 EAST 300 SOUTH
SALT LAKE CITY UT 84145-0244

Attorney for Respondent
Workforce Appeals Board of the
Utah Department of Workforce
Service

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JURISDICTION OF THE COURT OF APPEALS

This Court has jurisdiction of this Petition for Review pursuant to Article 8, §3 of the Utah Constitution; Utah Code Ann., §§35A-4-508(8)(a), 78A-4-103, 63G-4-403; and Rule 14 of the Rules of Appellate Procedure.

ISSUES PRESENTED FOR REVIEW

Did the Workforce Appeals Board violate Gregory A. Lowrey/Whole Life Ministries/UBU Ministries/Happy Valley Tattoo's constitutional rights by failing to find the entity was a religious organization for purposes of unemployment insurance benefit contributions?

Did the Workforce Appeals Board act reasonably and rationally by concluding the services performed by the Claimant, Jacklyn Emmett Johnson, on behalf of the Employer, should be considered employment subject to unemployment insurance coverage pursuant to the provisions of §§35A-4-204 and 35A-4-208?

STANDARD OF REVIEW

Petitioner presents two main issues on appeal: 1) whether the Board violated the Employer's constitutional rights, and 2) whether the Board incorrectly concluded the service performed by the Claimant on behalf of the Employer was employment subject to coverage.

Petitioner's question of whether the Administrative Law Judge and the Board deprived the Employer of constitutional rights is properly reviewed under the correction of error standard. Utah Code Ann. §63G-4-403(4)(a) (2008). See *Exxon Corp. v. Utah State Tax Com'n*, 2010 UT 16, ¶ 6, 228 P.2d 1326 (Utah 2010), *Questar Pipeline v. Tax Commission*, 817 P.2d 316, 318 (Utah 1991). See also *SEMECO Indus. Inc. v. Auditing Div.*, 849 P.2d 1167, 1171 (Utah 1993) (Durham, J., dissenting).

The second issue presented on appeal is properly reviewed under the intermediate deference standard. There is no case law regarding the discretion of the Board to interpret the statutory language concerning whether a worker's service or a particular employer is exempt from coverage of the Utah Employment Security Act. The statutory language concerning such exemptions is contained in the same general section of the statute as those regarding a worker's status as an employee or independent contractor. This Court has held when "there is a grant of discretion to the agency concerning the language in question," either expressly made in the statute or implied from the statutory language, the agency is entitled to a degree of deference such that it should be affirmed if its decision is reasonable and rational." *Tasters Ltd., Inc. v. Department of Workforce Services*, 863 P.2d 12, 19 (Utah App. 1993) (citing *Wagstaff v. Department of Employment Sec.*, 826 P.2d 1069, 1071-72 (Utah App. 1992)). In *Tasters*, this Court was addressing the issue of whether the Board properly found certain workers were employees rather than independent contractors. *Id.* In addressing the standard of review, this Court concluded the legislature granted discretion to the Board to interpret the statutory language concerning a worker's status as an employee or independent

contractor. Accordingly, this Court stated it "will reverse the Board's ultimate determination, and upset its intermediate conclusions, only if we conclude they are irrational or unreasonable." Id. *See* Utah Code Ann. §63G-4-403(4) (2008). See also *SEMECO Indus. Inc.*, 849 P.2d at 1172 (Durham, J., dissenting).

STATUTES AND REGULATORY PROVISIONS AT ISSUE

The statutes and rules that are determinative in this matter are set forth verbatim in Addendum A, and include the following:

§35A-4-203, Utah Code Annotated
§35A-4-204, Utah Code Annotated
§35A-4-208, Utah Code Annotated
§35A-4-508, Utah Code Annotated
§63G-4-403, Utah Code Annotated
§78A-4-103, Utah Code Annotated
26 U.S.C. §501(c)(3)
26 U.S.C. §3306(c)(8)
R994-403-120e Utah Admin Code
R994-508-109(7) Utah Admin Code
R994-508-305(2) Utah Admin Code

STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition Below.

In September 2009, Ms. Jacklyn Emmett Johnson filed for unemployment insurance benefits with the Utah Department of Workforce Services ("DWS"). DWS initiated an audit of Ms. Johnson's employment with the Petitioner, Gregory Allen

Lowrey/Whole Life Ministries/Happy Valley Tattoo & Piercing ("Employer") to determine if the services Ms. Johnson performed for the Employer constituted employment subject to the Utah Employment Security Act. (R. 1-2). On November 23, 2009, DWS determined the service Ms. Johnson performed for the Employer was employment subject to the Utah Employment Security Act, Utah Code Ann. §35A-4-204(3)(e)(i). (R. 18-19). (All Utah Code provisions are found sequentially at Addendum A, Department decisions at Addendum B).

Mr. Lowrey appealed DWS' determination on December 9, 2009. (R. 20-23). On January 26, 2010, DWS sent Mr. Lowrey and Ms. Johnson a notice of a hearing before an administrative law judge to be held on March 3, 2010. (R. 56-58). On May 10, 2010, the Administrative Law Judge issued his findings of fact and conclusions of law, concluding Ms. Johnson's services for the Employer constituted employment subject to unemployment insurance taxes. (R. 101-103). (See Addendum C). Mr. Lowrey appealed the Administrative Law Judge's decision to the Workforce Appeals Board ("Board") on June 9, 2010. (R. 104-120).

On July 13, 2010, the Board unanimously affirmed the Administrative Law Judge's decision, holding Ms. Johnson's services as an assistant to Mr. Lowrey and receptionist for the Employer constituted employment subject to unemployment insurance coverage. (R. 122-129). On August 2, 2010, Mr. Lowrey requested reconsideration of the Board's decision and a 60-day extension of time. (R. 130-140). On August 25, 2010, the Board denied both requests. (R. 154-155) (See Addendum D).

Mr. Lowrey then filed a petition for review with this Court on September 22, 2010. (R. 156-159).

B. Statement of the Facts.

The Workforce Appeals Board supplements and corrects the Employer's Statement of the Facts as follows:

In November 2001, Whole Life Ministries registered the business name "Happy Valley Tattoo and Piercing" ("Happy Valley"). Gregory Lowrey and Kita Lowrey were listed as the directors of Whole Life Ministries and Gregory Lowrey was listed as the registered agent of the business on the application for business name registration. Mr. Lowrey and Whole Life Ministries were listed as having the same address on the application. The purpose of the business was listed as "performance of tattoo and body piercing and related services." (R. 9).

On November 15, 2004, Mr. Lowrey renewed the corporate registration information for Happy Valley with the Utah Department of Commerce. The business purpose of the entity was listed as "personal service." (R. 5). On October 15, 2007, Mr. Lowrey amended the corporate filing for Happy Valley with the Department of Commerce, listing himself and Whole Life Ministries as the registered principles of the business. Whole Life Ministries was listed as the "applicant." (R. 6-7). On February 14, 2008, Mr. Lowrey amended the corporate filing to list the business purpose of the entity as a religious organization. (R. 8). Whole Life Ministries and Gregory Allen Lowrey

were listed as having the same address of record on each of these filings with the Department of Commerce. (R. 5-8).

In 2009, Whole Life Ministries changed its name to "UBU Ministries." (R. 67, R. 86:41-87:10, 152). Neither Whole Life Ministries nor UBU Ministries have applied for "501(c)(3)" status with the Internal Revenue Service ("IRS") because they do not wish to "give the government a degree of control" over their "free church." (R. 72:19, 74:44-75:13).

Ms. Johnson worked as an employee of Whole Life Ministries/Happy Valley from approximately May 2008 through September 2009. (R. 3). She learned about the position from a "MySpace" advertisement that did not indicate Happy Valley was affiliated with Whole Life Ministries or any other religious organization. (R. 72:1, 88:1-14). During her employment, Ms. Johnson worked as a cashier and receptionist for Happy Valley and as an assistant to Mr. Lowrey. (R. 70:21-24,41-44; 71:1-7, 89:40-42, 90:1-9). She was paid in cash and provided electronic paycheck records listing she was paid by UBU Ministries. (R. 71:32, 83:3, 88:28-89:36). The Employer paid "FICA" taxes on behalf of Ms. Johnson (R. 76:42-77:2). Ms. Johnson did not know much about the ministry and did not understand the daily morning meetings to be religious services (R. 90:22-91:40).

On November 16, 2009, the website for Happy Valley listed "Doc" Lowrey and Kita Kazoo as master body piercer, tattooists and ministers, and Rev. Steve Bosh as a tattoo artist associated with the business. (R. 12). The website noted, "Happy Valley Tattoo is a service of UBU Ministries a non-denominational church which revolves around one central teaching (the Golden Rule) and does not proselyte tattoo and piercing

patrons. We treat tattoos and piercings as spiritual emblems and their application as a spiritual service." (R. 13). The website listed hours of service and noted that appointments must be made in person because appointments require a \$50 non-refundable deposit. (R. 13-15). Under the heading "donations" the website notes that Happy Valley prices out tattoos by the piece, but "[t]here is a \$50 minimum." (R. 15). Ms. Johnson understood the monetary amount of each "donation" was not negotiable. (R. 92:15-27). The website also noted, "We consider tattooing and piercing to be spiritual services and always strive to offer the highest quality in design, application, courtesy, and safety to our patrons. To learn more about the other service and beliefs of UBU Ministries, find the link in the menu to the right." (R. 11). On February 23, 2010, UBU Ministries website noted in Utah "Rev. Steve Bosh is at the American Fork church building providing services to the community" and provided a link to Happy Valley Tattoo. (R. 51). At that time, "Doc" Lowrey and Kita Kazoo were listed under the heading "management." (R. 54).

The Employer did not provide the ALJ with a copy of the articles of incorporation of Whole Life Ministries, but Mr. Lowrey copied "Article III" of those articles into his written statement to the Judge. (R. 29-30). The Employer provided a blank copy of an "Employment/Independent SubContractor Agreement" with Mr. Lowrey's written statement. (R. 38).

The Administrative Law Judge advised the parties at the beginning of the hearing,

This hearing is for both parties to present all available testimony, and evidence, with regard to the case. If either party chooses to appeal the

decision there will not be another hearing on this matter. Testimony, and evidence present today will become the case record and reviewed in the event of a further appeal. For this reason it is important to present all testimony and evidence at this hearing. (R. 60:6-12).

Mr. Lowrey testified Ms. Johnson was an employee of Whole Life Ministries and Happy Valley, indicating there was "no difference" between the two entities and there was "no dispute about whether [Ms. Johnson] was an employee." (R. 67:7, 68:12). He testified the entities were audited in 2005 by the IRS, but did not provide any documentation to verify the findings of that audit or arrange for the auditor to testify in the hearing. (R. 75:23-76:24). Mr. Lowrey testified the Department previously refunded unemployment contributions to the entities, but the Department witness and Administrative Law Judge were unable to verify that information reviewing Department records, finding no determination was issued following an investigation in 2005. (R. 77:2-16, 84:33:39, 93:37-43).

Ms. Johnson filed no weekly claims for benefits and did not receive any unemployment insurance benefit payments. The Department did not issue a determination whether Happy Valley discharged Ms. Johnson for just cause.

SUMMARY OF ARGUMENT

The Board reasonably and rationally concluded Ms. Johnson performed services as an employee of Gregory A. Lowrey. Mr. Lowrey is the principal agent for Happy Valley, Whole Life Ministries, and UBU Ministries. He is also the co-director, with his wife, of Whole Life Ministries and UBU Ministries. The applications these entities

submitted to the Utah Department of Commerce all list Mr. and Mrs. Lowrey's address as being identical to the entities themselves. Although Whole Life Ministries and UBU Ministries have been listed as the "owners" of Happy Valley, neither entity provided information to the Department when it investigated Ms. Johnson's employment status. The Board reasonably concluded there was no substantive difference between Mr. Lowrey and his ministries.

The Board reasonably and rationally concluded the Employer failed to establish, by a preponderance of the evidence, the organization falls under the "religious organization" exception of the Utah Employment Security Act. The Act presumes all services performed by an individual for wages or under any contract of hire to be employment unless proven otherwise. The Act first requires the Department to determine if the services performed are excluded from employment as defined in the Federal Unemployment Tax Act. That Act refers to 26 U.S.C. §501(c)(3) of the Internal Revenue Code to define religious organizations. An organization is considered a religious organization under §501(c)(3) only if it is organized and operated exclusively for religious purposes and no part of the net earnings of the business inured to the benefit of any private shareholder or individual.

The Board reasonably and rationally concluded the Employer did not establish, by a preponderance of the evidence, the business was organized and operated exclusively for religious purposes. The Employer originally reported to the Utah Department of Commerce it was established to provide "tattoo and body piercing and related services"

and "personal services." The Employer later reported to the Commerce Department it was established to provide "religious services." The Employer provided no explanation of why its self-reported purpose changed over the years when the services it provided, tattooing and piercing, had not changed. Therefore, the Employer provides a mix of personal and religious services, and providing personal services to clients is a substantive purpose of the organization.

The Board further reasonably and rationally concluded the Employer did not establish, by a preponderance of the evidence, no part of the net earnings of the business inured to the benefit of any private shareholder or individual. The organization has very few members, at least two of whom are related to each other and many work for Happy Valley. The Employer provided no evidence to suggest who receives the benefit of the net profits of the business.

The Board also reasonably and rationally concluded the Employer did not establish, by a preponderance of the evidence, the company had less than four employees during 2008 or 2009. Furthermore, because the statute defining employment by a religious organization is conjunctive, once the Board concluded the Employer was not a religious entity, it only had to determine the business employed at least one person. That person was Ms. Johnson.

The Board's decision only determined Ms. Johnson's wages from the Employer were subject to the Utah Employment Security Act. The Board did not grant the Claimant benefits. The Department has yet to determine whether the Claimant was discharged for just cause and that issue was not before the Board. Furthermore, the

Claimant never filed a weekly claim for unemployment insurance benefits and, therefore, never received any benefit payments.

Finally, the Board did not violate the Employer's constitutional rights. The statute does not violate the Establishment Clause or interfere with the free exercise of religion. The Board further properly applied the provisions of a constitutional statute to the facts of this case.

ARGUMENT

I. THE BOARD PROPERLY CONCLUDED MS. JOHNSON WAS GREGORY A. LOWREY'S EMPLOYEE.

Mr. Lowrey contends payroll records confirm Ms. Johnson was an employee of UBU Ministries, not of him personally or of Happy Valley Tattoo. The Department determined Gregory Lowrey was doing business as Happy Valley Tattoo based on registration records from the Utah Department of Commerce that list Mr. Lowrey as the principal agent of both Happy Valley Tattoo and Whole Life Ministries. Mr. Lowrey contends he was only a "third party" to the corporate entity. This assertion is manifestly false as Mr. Lowrey is listed as the director of Whole Life Ministries. It is nearly impossible to consider the director of a corporation a "third party" to that organization.

Whole Life Ministries is no longer in operation in Utah and has changed its name to UBU Ministries. UBU Ministries has apparently relocated to another state. Neither corporate entity responded to any of the Department's requests for information regarding

Ms. Johnson's employment or claim for benefits. Furthermore, both entities share Mr. Lowrey's address of record with the Utah Department of Commerce. Therefore, the Department reasonably attached ownership of the Happy Valley/Whole Life Ministries/UBU Ministries to Gregory Lowrey personally.

Furthermore, regardless of whether Mr. Lowrey, Whole Life Ministries, or UBU Ministries is the owner of Happy Valley, the Board was required to determine if Ms. Johnson's employer should be considered exempt from the provisions of the Utah Employment Security Act.

II. THE BOARD PROPERLY CONCLUDED THE EMPLOYER FAILED TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THE ENTITY WAS AN EXEMPT EMPLOYER DURING MS. JOHNSON'S TENURE WITH THE BUSINESS.

Section 35A-4-203(1) defines an employer as "an individual or employing unit which employs one or more individuals for some portion of a day during a calendar year." Utah law presumes all services performed by an individual for wages or under any contract of hire are considered to be employment unless proven otherwise "to the satisfaction of the division." §35A-4-204(3). "[S]ervice is performed by an individual in the employ of a religious, charitable, educational, or other organization" is considered employment only if:

- (i) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. §3306(c)(8), solely by reason of §3306(c)(8) of that act; **and**

(ii) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time. §35A-4-204(2)(e). [emphasis supplied]

§ 35A-4-205(1) further states:

(1) If the services are also exempted under the Federal Unemployment Tax Act, as amended, employment does not include:

(g) for the purposes of Subsections §35A-4-204(2)(d) and (e), service performed:

(i) in the employ of:

(A) **a church** or convention or association of churches; or

(B) **an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches[.]** [emphasis supplied]

Therefore, the Department was required to determine if Ms. Johnson's service was excluded from employment under the Federal Unemployment Tax Act, if the Employer had four or more individuals in employment during 2008 or 2009, and if the organization for which Ms. Johnson worked was operated primarily for religious purposes.

Section 26 U.S.C. §3306(c)(8) states:

(c) Employment

For purposes of this chapter, the term “employment” means . . . any service, of whatever nature, performed after 1954 by an employee for the person employing him . . . except—

...

(8) service performed in the employ of a religious, charitable, educational, or other organization described in §501(c)(3) which is exempt from income tax under 501(a).

The Utah State Legislature has expressly granted the Department the authority to determine which entities are religious organizations for purposes of exemption from unemployment insurance coverage. The Department must have some means of distinguishing between genuine religious entities and tax-evaders. The Legislature has provided the Department with those means, namely the standards of §501(c)(3). Therefore, in order to determine if Ms. Johnson's services constituted employment, the Department must first determine whether or not the Employer is exempt from income tax. The relevant section of the tax code states:

§501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation

An organization described in subsection (c) or (d) or § 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under § 502 or 503.

...

(c) List of exempt organizations

The following organizations are referred to in subsection (a):

...

(3) Corporations, and any community chest, fund, or foundation, organized and operated **exclusively for religious**, charitable, scientific, testing for public safety, literary, or educational **purposes**, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, **no part of the net earnings of which inures to the benefit of any private shareholder or individual**, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in

(including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.
[emphasis supplied]

As noted by the appellant in his brief, the Board must look to the plain language of the statute to determine if the Employer falls under the above standard. Upon reviewing all of the testimony and evidence before the Administrative Law Judge, the Board concluded that the Employer did not meet the above standard.

The Employer argues non-profit religious corporations are "automatically" tax exempt and, therefore, not subject to unemployment taxes. However, only "churches" are automatically considered tax exempt by the IRS and "[R]eligious organizations that wish to be tax exempt generally must apply to the IRS for tax-exempt status[.]" IRS Publication 1828, 3. The Board notes that qualification as a "religious organization" is actually less onerous than the standard to qualify as a "church" under IRS regulations allowing tax-exempt status for charitable contributions to a church. As noted by the United States Tax Court in *First Church of In Theo v. Commissioner of Internal Revenue*, 56 T.C.M. 1045 (1989), to qualify as a church an organization "must serve an associational role in fulfilling its religious purposes" and "the threshold criteria of communal activity." The Tax Court concluded by stating:

'Exemption from taxation as a church is not a right, but a matter of legislative grace.' *Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849, 854 (10th Cir. 1972). An organization cannot merely declare that it is a church; it must demonstrate that it is. *Church of the Visible Intelligence that Governs the Universe v. United States*, 4 Cl. Ct. 55 (1983). Thus, 'it is not enough that a corporation believes and declares itself to be a church. Nor is it sufficient that the applicant prepares superficially responsive documentation for each of the established IRS criteria.'

American Guidance Foundation v. United States, [40 F.Supp. 304 (D.D.C. 1980), aff'd in an unpublished opinion (D.C. Cir. 1980)] at 307. 'Private religious beliefs, practiced in the solitude of a family living room, cannot transform a man's home into a church.' *American Guidance Foundation v. United States*, supra at 307. Id.

The associational test was recently affirmed as an "appropriate test for determining church status" by the United States Court of Appeals for the Federal Circuit in *Foundation of Human Understanding v. United States*, 614 F.3d 1383, 1389 (Fed. Cir. 2010). The Board did not determine whether or not the Employer was a "church" because such a requirement would actually exceed the requirements of the Utah Employment Security Act and the Federal Unemployment Tax Act, which only requires that the Employer be a religious organization under the definition of §501(c)(3).

The Employer also argues the filings with the Utah Department of Commerce conclusively demonstrate the business is a non-profit, religious organization. This is not the case. First, documents filed with the Utah Department of Commerce are accepted on "good faith." That means the agency performs no review as to the validity of the statements made on the documents. Second, a review of the relevant codes cited above demonstrate a very specific standard for determining if certain non-profit agencies, including religious entities, are tax exempt. If a self-declaration was all that was required to establish an entity was a religious organization, there would be no need for the above cited regulations to specifically refer to the definitions in §501(c)(3).

- A. The Board reasonably and rationally concluded the Employer did not establish by a preponderance of the evidence the business was organized and operated exclusively for religious purposes.**

R994-508-109(7) provides that the:

evidentiary standard for ALJ decisions, except in cases of fraud, is a preponderance of the evidence. Preponderance means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Based upon the information provided in the hearing, the Board had to determine if it was "more probable than not" the Employer was organized exclusively for religious purposes.

In *American Association of Christian Schools Voluntary Employees Beneficiary Association Welfare Plan Trust v. United States*, 850 F.2d 1510 (11th Cir. 1988), the Eleventh Circuit Court noted that:

In determining whether the Trust qualifies as a tax-exempt religious organization, we are mindful that "the presence of a single [non-exempt] purpose, if substantial in nature, will destroy the exemption **regardless of the number or importance of truly [exempt] purposes.**" *Better Business Bureau v. United States*, 326 U.S. 279, 283, 66 S.Ct. 112, 114, 90 L.Ed. 67 (1945). [Emphasis supplied.] Id. at 1513.

In that case, the Court found the trust had a substantial private, non-exempt purpose of providing insurance. In this case, the Board found the Employer had a substantial private, non-exempt purpose of providing personal service to clients, namely tattoos and piercings. Although the Employer considers tattoos and piercing to be spiritual emblems, those same emblems can presumably serve an entirely secular purpose for the Employer's clients. It is further clear from the record that many of the Employer's clients had no religious interest in obtaining tattoos and piercings. Therefore, the Board reasonably and rationally concluded the Employer had not established, by a

preponderance of the evidence, the organization was organized exclusively for religious purposes, rather than for a mixed public and private interest.

The Employer argues the Board "lacks the authority to disregard or dispute charters granted by the State of Utah Department of Commerce" and asserts the fact the Employer indicated in 2008 its business purpose was "religious services" is conclusive evidence the exclusive purpose of the business was the provision of such services. However, the relevant statute clearly states the Department shall only grant exempt status to those religious organizations which fall under the provisions of §501(c)(3), not all organizations who have reported to the Department of Commerce they intend to provide religious services. Furthermore, the Employer's initial application for corporate status in 2001 indicated the purpose of the organization was the provision of "personal services." No evidence was provided to show the purpose or governance of the business changed between the initial application and the renewal in 2008.

The Employer provided a purported copy of the Articles of Incorporation of Whole Life Ministries upon requesting reconsideration of the decision. Generally new evidence on appeal cannot be considered by the Board, "[a]bsent a showing of unusual or extraordinary circumstances." R994-508-305(2). The Board cannot simply assume facts that were not in evidence before the Administrative Law Judge based upon an unauthenticated document. Furthermore, the Articles of Incorporation are in direct contradiction of the application for incorporation, in that the Articles indicate the corporation is to be operated solely for religious services and the application indicates the business is being operated in order to provide personal services.

The Employer cites a 1987 informal decision by the State Tax Commission of Utah to support the argument the Employer is a religious organization. The Commission in that case reinstated the petitioner's institutional clearance based upon evidence the nonprofit corporation filed articles of incorporation which explicitly stated the corporation was formed "exclusively for religious purposes and is not formed for the private benefit or gain of any person" and which made specific reference to complying with §501(c)(3) as well a letter from the IRS stating the petitioner was to be treated as a church for tax purposes.

No such evidence was provided to the ALJ on behalf of the Employer. After the Employer requested reconsideration from the Board, Mr. Lowrey sent the Board an alleged copy of the Articles of Incorporation of Whole Life Ministries filed November 20, 2000, with the Utah Division of Corporations and Commercial Code, an alleged copy of Whole Life Ministries' By-Laws from 2004, and a letter from the IRS stating, "We have no record that your organization has been recognized as exempt from Federal income tax under Internal Revenue Code §501(a)." (R. 141-152). The evidence provided was insufficient for the Board to reasonably conclude the Employer was a religious organization.

Finally, the testimony and evidence in the hearing demonstrated Happy Valley provided tattoo and piercing services to clients as a personal service to those clients. Ms. Johnson credibly testified most clients were only minimally aware of the religious purposes or meanings behind the tattoo artists' work. Although Mr. Lowrey and the other

artists at the parlor considered their work to be spiritual, there is no evidence the clients considered spiritual services were being offered to them. Therefore, the Board reasonably and rationally concluded it is more likely than not the business was operated in order to provide personal services, as well as religious services.

B. The Board reasonably and rationally concluded the Employer did not establish by a preponderance of the evidence no part of the net earnings of the business inured to the benefit of any private shareholder or individual.

In *Church of Ethereal Joy v. Commissioner of Internal Revenue*, 83 T.C. 20 (1984), the United States Tax Court considered the Church of Ethereal Joy's request for declaratory judgment that it qualified for tax exempt status. The Tax Court determined it did not qualify because it had not met its burden to show it was organized and operated exclusively for public rather than private benefit. The Tax Court explained:

Although they are separate requirements, the "private inurement" test and the "operated exclusively for exempt purposes" test prescribed by § 501(c)(3) often substantially overlap. *Church of the Transfiguring Spirit v. Commissioner*, 76 T.C. 1, 5, n. 5 (1981); *People of God Community v. Commissioner*, 75 T.C. 127, 131 (1980).

An organization is not operated exclusively for an exempt purpose if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Sec. 1.501(c)(3)1(c)(1), Income Tax Regs. *Western Catholic Church v. Commissioner*, 73 T.C. 196, 208 (1979), affd. in an unpublished opinion 631 F.2d 736 (7th Cir. 1980); *Nat. Assn. of American Churches v. Commissioner*, 82 T.C. 18, 28-29 (1984). § 1.501(c)(3)1(d)(1)(ii), Income Tax Regs., provides that an organization is not operated exclusively for exempt purposes unless it is operated for the benefit of the public rather than for the benefit of a private interest. **Petitioner must therefore show that it is not organized or operated for the benefit of private interests such as those of its organizers. *Basic Bible Church v. Commissioner*, 74 T.C. 846, 856 (1980). [Emphasis added, footnotes omitted.] 83 T.C. at 21-22.**

The Tax Court went on to note the Church of Ethereal Joy appeared to consist solely of the Board of Directors and "had no identifiable congregation." Id. at 22. The Tax Court expressed concerns the group was a

small self-perpetuating group who could, without challenge, dictate petitioner's program and operations, prepare its budget, and spend its funds. And they could continue to do so indefinitely. Although control by such a small group may not necessarily disqualify it for exemption, " it provides an obvious opportunity for abuse of the claimed tax-exempt status." *Bubbling Well Church v. Commissioner*, 74 T.C. 531, 535 (1980), affd. 670 F.2d 104 (9th Cir. 1981). Id. at 23.

Citing *Church of Ethereal Joy*, the United States Court of Appeals for the Fifth Circuit found in *St. David's Health Care System v. U.S.*, 349 F.3d 232 (5th Cir. 2003) that:

In order to ascertain whether an organization furthers non-charitable interests, we can examine the **structure and management of the organization**. See *Church of Ethereal Joy v. Commissioner*, 83 T.C. 20, 22-23, 1984 WL 15591 (1984). In other words, we look to which **individuals or entities control the organization**. See id. at 23; see also *Lowry Hosp. Ass'n v. Commissioner*, 66 T.C. 850, 859-60, 1976 WL 3664 (1976) (concluding that a hospital could not be deemed to operate exclusively for charitable purposes, partly because of the "control and dominance" exercised by a single physician over the hospital's affairs). If **private individuals or for-profit entities have either formal or effective control**, we presume that the organization furthers the **profit-seeking motivations of those private individuals or entities**. Id. at 237.

The Board in this case has similar concerns to the Tax Court in *Church of Ethereal Joy*. Based on the information provided in the hearing, the Board reasonably concluded UBU Ministries consisted primarily of the managers of Happy Valley, namely Mr. Lowrey and his spouse, and those of their employees who agreed with their spiritual ideas. These private individuals had apparently exclusive control of the program and

operation of the organization and could easily take advantage of the organization for their private benefit.

In *Bubbling Well Church of Universal Love v. Commissioner of Internal Revenue*, 74 TC 531 (1980), the United States Tax Court considered whether the petitioner's net earnings inured to the benefit of private individuals. In that case, the court noted the board of directors was composed of three members of the same family and "no one else had authority to review their decisions." *Id.* at 537. The court explained:

If members of the Harberts family were actually engaged in performing employment services, compensating them in reasonable amounts for those services would not disqualify petitioners for exemption. *Birmingham Business College, Inc. v. Commissioner*, 276 F.2d 476, 480-481 (5th Cir. 1960), *affg.* on this issue a Memorandum Opinion of this Court. But excessive payments made purportedly as compensation constitute benefit inurement in contravention of § 501(c)(3). *Mabee Petroleum Corp. v. United States*, 203 F.2d 872, 876 (5th Cir. 1953); *Gemological Institute of America v. Commissioner*, 17 T.C. 1604, 1609 (1952), *affd.* per curiam 212 F.2d 205 (9th Cir. 1954). The question of whether salary and other compensation payments are reasonable in amount is purely a question of fact to be resolved in the light of all the evidence. *Mabee Petroleum Corp. v. United States*, *supra* at 875; *Unitary Mission Church of Long Island v. Commissioner*, 74 T.C. 507 (1980). *Id.* at 537-538.

The Court then noted the petitioner paid nearly all of its income to the family as compensation or reimbursement, but provided no information which would justify doing so beyond the petitioner's simple assertion each member of the board of directors devoted all of their time to church activities. *Id.* at 538. See also *Rakosi v. U.S.*, 904 F.2d 41 (9th Cir. 1990) (Private individuals who use church money to support their personal living expenses are not entitled to a charitable donation deduction), *Orange County Agr. Soc. v. C.I.R.* 893 F.2d 529 (2nd Cir. 1990) ("The burden of proof is on the taxpayer to

demonstrate insiders do not benefit from the tax-exempt organization, especially where the facts indicate transactions arguably not on arm's length terms.")

In this case, the Board had even less information than the Tax Court in *Bubbling Well Church of Universal Love*. The only "shareholders" listed in relation to the DBA are Mr. Lowrey and his spouse. There is ample evidence clients of the business were required to pay at least \$50 for services rendered. No evidence was provided to the Department or the Administrative Law Judge concerning the net earnings of the business and whether those net earnings benefited any private individual, specifically Mr. Lowrey. The Board had no documentation or even statements concerning where the net profits of the business went, besides Ms. Johnson's paycheck. The Board reasonably and rationally found it was more likely than not the net earnings of the business did in fact inure to the private benefit of at least one individual.

C. The Board reasonably and rationally concluded Employer did not establish by a preponderance of the evidence the company had less than four employees during 2008 or 2009.

Ms. Johnson advised the Department investigator the Employer had at least four employees during the time she worked at Happy Valley: Ms. Johnson, Mr. and Ms. Lowrey, and several tattoo artists. During the hearing on this matter, Mr. Lowrey asserted the tattoo artists were independent contractors, rather than employees. As explained above, Utah law presumes all services performed by an individual for wages or under any contract of hire are considered to be employment unless proven otherwise "to

the satisfaction of the division." §35A-4-204(3). The law further provide a means for an employer to obtain declaratory recognition of exempt status:

35A-4-313. Determination of employer and employment.

The division or its authorized representatives may, upon its own motion or upon application of an employing unit, determine whether an employing unit constitutes an employer and whether services performed for, or in connection with the business of, an employer constitute employment for the employing unit. The determinations may constitute the basis for determination of contribution liability under Sub§35A-4-305(2) and be subject to review and appeal as provided.

Department rules related to the above section provide:

R994-202-101. Legal Status of Employing Unit.

The Department may, on its own motion or if requested by an employer, determine the legal status of an employing unit according to §35A-4-313. The determination will be based on the best available information including, registration forms, income tax returns, financial and business records, regulatory licenses, legal documents, and information from the involved parties. The Department's determination is subject to review and may be appealed according to rule R994-508, Appeal Procedures.

...

R994-204-402. Procedure for Issuing a Safe Haven Determination.

(1) If the issue of the status of a worker or class of workers arises out of an audit or request for declaratory order and there is no claim for benefits pending at the time, the Department will determine the status on the basis of the best information available at the time. A request for a declaratory order will be denied if there is a pending claim for benefits by a worker who would be affected by the order.

(2) A worker whose status is determined as a result of an audit or declaratory order is not required to file a written consent to the determination pursuant to Subsection 63G-4-503(3)(b). Any consent given by the worker is invalid and will be considered to be in violation of Subsection 35A-4-103(1)(c)(ii).

(3) If the issue of a worker's status arises out of a claim for benefits and there has been a prior audit determination or declaratory order determining the status of the worker or a class of workers to which the individual belonged, the Department will issue a notice as part of the monetary determination, denying use of the worker's independent contractor earnings as wage credits for the base period on the basis of the prior status determination. The worker may protest the determination by filing an appeal within 15 days of the date of the notice. Upon receipt of a protest the Department will review the status of the worker. On the basis of its review, the Department will issue a new determination which will either affirm, reverse, or revise the original determination. The new determination will be mailed to the parties and can be appealed by the employer or the worker as though it were an "initial Department determination" as provided in rule §§ R994-508-101 through R994-508-104.

As none of the other individuals employed by Happy Valley applied for unemployment insurance benefits and the Employer did not request any declaratory judgment regarding their status, the Department is obliged to presume those individuals were employees.

Further, since the Board found the Employer was not a religious organization under §501(c)(3), it was not required to officially determine the number of employees because the test is a conjunctive test. §35A-4-204(3) states an individual is considered to be in the employ of a religious organization only if the service is excluded from employment as defined in the Federal Unemployment Tax Act and the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks. Since the Board reasonably concluded Ms. Johnson's service was not excluded under the Federal Unemployment Tax Act, it could not find Ms. Johnson was employed by a religious organization. The Board was then required to return to the primary

definition of employment. The basic requirement for employment, as cited above, is an organization employed at least one person during the time period. Utah Code Ann. §35A-4-203(1). That one person was clearly Ms. Johnson.

III. THE BOARD'S DECISION ONLY DETERMINED MS. JOHNSON'S EMPLOYMENT WAS SUBJECT EMPLOYMENT AND DID NOT "GRANT" HER UNEMPLOYMENT INSURANCE BENEFITS.

The Employer cites several cases concerning the just cause standard in cases of discharge, including *Fieeiki v. Department of Workforce Services*, 2005 UT App 298, 122 P.3d 706, *Autoliv ASP v. Department of Workforce Services*, 2001 UT App 1989, 29 P.3d 7, and *Nelson v. Department of Employment Security*, 801 P.2d 158 (Utah Ct.App. 1990). Those cases are not relevant to this case, because the Board made no finding regarding the Claimant's discharge from Happy Valley. In fact, no testimony or evidence was provided in the hearing regarding why Ms. Johnson was separated from her employment. The Board simply found the Claimant's wages from the Employer should be used in determining her monetary eligibility for benefits. The Claimant's separation from employment was not an issue before the Board and is not at issue before this Court. The Appellant's citation of cases related to the just cause standard are not relevant to the issue at hand.

IV. THE BOARD DID NOT VIOLATE THE EMPLOYER'S CONSTITUTIONAL RIGHTS BY DETERMINING IT WAS NOT AN EXEMPT EMPLOYER UNDER THE UTAH EMPLOYMENT SECURITY ACT.

The Department does not question the legitimacy or sincerity of the religious practices or beliefs of Mr. Lowery, Whole Life Ministries or UBU Ministries. However, the Department is required by statute to determine if entities that hold themselves out as religious entities actually meet the definition of a religious organization under §501(c)(3). As the United States Court of Appeals for the Seventh Circuit explained in *United States v. Jeffries*, 854 F2d 254 (7th Cir 1988), "[T]here is no need to try to resolve any conflict there may be between a person's personal view of what constitutes a church and that which the tax law recognizes as a church qualifying for tax exempt status, even if we could. For tax purposes the tax law prevails." *Id.* at 257.

The Department is further confused as to why the Employer asserts the Department is in violation of the Establishment Clause of the United States Constitution. The Employer cites *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327 (1987), as controlling precedent of this matter. In that case, a class action suit was filed against the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, which owned and operated the Deseret Gymnasium, for discharging individuals who failed to maintain a "temple recommend." The class action suit alleged the defendant's actions constituted impermissible religious discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII). The defendant argued the Corporation was exempt from liability under §702 of Title VII, which exempts religious organizations from the

prohibition of religious discrimination in employment. The Supreme Court found that §702 of Title VII did not violate the Establishment Clause of the United States Constitution and remanded the matter to the Federal District Court.

The Court in *Amos* explained statutes which exempt religious organizations from certain tax burdens are not unconstitutional under the test established in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). The Court found:

Lemon requires first that the law at issue serve a "secular legislative purpose." Id. at 612. This does not mean that the law's purpose must be unrelated to religion -- that would amount to a requirement "that the government show a callous indifference to religious groups," *Zorach v. Clauson*, 343 U.S. 306, 314 (1952), and the Establishment Clause has never been so interpreted. Rather, *Lemon's* "purpose" requirement aims at preventing the relevant governmental decisionmaker -- in this case, Congress -- from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters.

Under the *Lemon* analysis, it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions. . . .

The second requirement under *Lemon* is that the law in question have "a principal or primary effect . . . that neither advances nor inhibits religion." 403 U.S. at 612. . . We find unpersuasive the District Court's reliance on the fact that § 702 singles out religious entities for a benefit. . . . Where, as here, government acts with the proper purpose of lifting a regulation that burdens the exercise of religion, we see no reason to require that the exemption come packaged with benefits to secular entities. . . .

It cannot be seriously contended that § 702 impermissibly entangles church and state; the statute effectuates a more complete separation of the two and avoids the kind of intrusive inquiry into religious belief that the District Court engaged in in this case. The statute easily passes muster under the third part of the *Lemon* test. [Footnotes omitted.] Id. at 335-340.

In the present case, the provisions which exempt religious organizations from being covered by the unemployment insurance program are clearly constitutional under

the *Lemon* test for the same reasons that the Court found that §702 of Title VII was constitutional. The provisions of §35A-204(3) are intended to "effect[ate] a more complete separation of [church and state]." Id. at 339. What is at issue in this case is whether the Employer falls under the exemption.

In *Hernandez v. Commissioner of Internal Revenue*, 490 US 680 (1989), the Supreme Court summarized the analytic framework used by the Court to determine if a statute is in violation of the Establishment Clause because the statute has a "denominational preference:"

Our decision in *Larson v. Valente*, 456 U.S. 228 (1982), supplies the analytic framework for evaluating petitioners' contentions. *Larson* teaches that, when it is claimed that a denominational preference exists, the initial inquiry is whether the law facially differentiates among religions. If no such facial preference exists, we proceed to apply the customary three-pronged Establishment Clause inquiry derived from *Lemon v. Kurtzman*, 403 U.S. 602 (1971). [Footnotes omitted.] Id. at 695.

Nothing on the face of §35A-4-204(3) suggests the code is intended to "differentiate among sects" and it instead applies to "all religious entities." Id. at 695-696.

Furthermore, there has been no allegation in this case that §35A-3-204(3) was born of animus to religion or it is intended to advance or inhibit religion. The Department is clearly not attempting to establish or promote any religious institution. Further, the statute does not require excessive entanglement between church and state. The Court stated in *Hernandez* that:

[R]outine regulatory interaction which involves no inquiries into religious doctrine, see *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 451 (1969), no delegation of state power to a religious body, see *Larkin v. Grendel's Den, Inc.*, 459 U.S.

116 (1982), and no "detailed monitoring and close administrative contact" between secular and religious bodies, see *Aguilar [v. Felton]*, 473 U.S. at 414, does not of itself violate the nonentanglement command. See *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 305-306 (1985) (stating that nonentanglement principle "does not exempt religious organizations from such secular governmental activity as fire inspections and building and zoning regulations" or the recordkeeping requirements of the Fair Labor Standards Act) (citation omitted). 490 US at 696-697.

The Department investigated Ms. Johnson's employment status as part of a routine regulatory interaction. The Department is required to routinely investigate whether individuals qualify for unemployment insurance benefits and to do so it must, at times, determine whether an individual was employed by an exempt religious organization. The Department only required the Employer to provide sufficient evidence to show it was "more likely than not" to be an exempt organization under applicable statutes. R994-508-109(7).

The Employer also argues the Department has impeded its free exercise of religion. The Supreme Court in *Hernandez* explained:

The free exercise inquiry asks whether government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden. *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 141-142 (1987); *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. at 717-719; *Wisconsin v. Yoder*, 406 U.S. 205, 220-221 (1972). 490 US at 699.

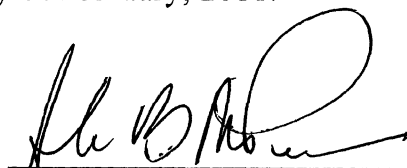
The Board did not place any burden on the Employer's central religious beliefs or practices. Nothing in the Board's decision prevents the Employer from performing tattooing or piercing services or other religious services. Further, the compelling governmental interest of ensuring qualified individuals receive unemployment benefits

justifies whatever burden the Employer has faced as a result of this decision. It is the duty of the Department to get benefits to unemployed workers without undue delay, and it is the responsibility of the filing parties to provide accurate and complete information to the Department. See R994-403-120e.

CONCLUSION

This Court should find the Board's conclusion Mr. Lowrey employed Ms. Johnson was reasonable and rational. This Court should further find the Board's conclusion the Employer is a non-exempt employer under the Utah Employment Security Act was reasonable and rational. Finally, this Court should find the Board did not violate the Employer's constitutional rights by applying a statute that does not violate the Establishment Clause or impede the free exercise of religion to the facts of the present case. For these reasons, this Court should uphold the Board's decision.

Respectfully submitted this 7th day of February, 2011.

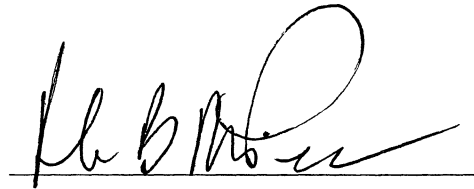
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AMANDA B. McPECK #10768
Attorney for Respondent
Workforce Appeals Board
Department of Workforce Services

CERTIFICATE OF MAILING

I CERTIFY that I mailed two copies of the foregoing Brief of Respondent, postage prepaid, to the following this 7th day of February 2011:

GREGORY A. LOWREY
621 SAINT LOUIS STREET
FERNDAL, MI 48220

A handwritten signature in black ink, appearing to read "G. A. Lowrey", is written over a horizontal line.

35A-4-203. Definition of employer.

As used in this chapter "employer" means:

(1) an individual or employing unit which employs one or more individuals for some portion of a day during a calendar year, or that, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, under the act, to be an employer;

(2) an employing unit that, having become an employer under Subsection (1), has not, under Sections 35A-4-303 and 35A-4-310, ceased to be an employer subject to this chapter; or

(3) for the effective period of its election under Subsection 35A-4-310(3), an employing unit that has elected to become fully subject to this chapter.

35A-4-204. Definition of employment.

(1) Subject to the other provisions of this section, "employment" means any service performed for wages or under any contract of hire, whether written or oral, express or implied, including service in interstate commerce, and service as an officer of a corporation.

(2) "Employment" includes an individual's entire service performed within or both within and without this state if one of Subsections 2(a) through (k) is satisfied.

(a) The service is localized in this state. Service is localized within this state if:

(i) the service is performed entirely within the state; or

(ii) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(b)(i) The service is not localized in any state but some of the service is performed in this state and the individual's base of operations, or, if there is no base of operations, the place from which the service is directed or controlled, is in this state; or

(ii) the individual's base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(c)(i)(A) The service is performed entirely outside this state and is not localized in any state;

(B) the worker is one of a class of employees who are required to travel outside this state in performance of their duties; and

(C)(I) the base of operations is in this state; or

(II) if there is no base of operations, the place from which the service is directed or controlled is in this state.

(ii) Services covered by an election under Subsection 35A-4-310(3),

and services covered by an arrangement under Section 35A-4-106 between the division and the agency charged with the administration of any other state or federal unemployment compensation law, under which all services performed by an individual for an employing unit are considered to be performed entirely within this state, are considered to be employment if the division has approved an election of the employing unit for whom the services are performed, under which the entire service of the individual during the period covered by the election is considered to be insured work.

(d)(i) The service is performed in the employ of the state, a county, city, town, school district, or other political subdivision of the state, or in the employ of an Indian tribe or tribal unit or an instrumentality or any one or more of the foregoing which is wholly owned by the state or one of its political subdivisions or Indian tribes or tribal units if:

(A) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(7);

(B) the service is not excluded from employment by Section 35A-4-205; and

(C) as to any county, city, town, school district, or political subdivision of this state, or any instrumentality of the same or Indian tribes or tribal units, that service is either:

(I) required to be treated as covered employment as a condition of eligibility of employers in this state for Federal Unemployment Tax Act employer tax credit;

(II) required to be treated as covered employment by any other requirement of the Federal Unemployment Tax Act, as amended; or

(III) not required to be treated as covered employment by any requirement of the Federal Unemployment Tax Act, but coverage of the service is elected by a majority of the members of the governing body of the political subdivision or instrumentality or tribal unit in accordance with Section 35A-4-310.

(ii) Benefits paid on the basis of service performed in the employ of this state shall be financed by payments to the division instead of contributions in the manner and amounts prescribed in Subsections 35A-4-311(2)(a) and (4).

(iii) Benefits paid on the basis of service performed in the employ of any other governmental entity or tribal unit described in Subsection (2) shall be financed by payments to the division in the manner and amount prescribed by the applicable provisions of Section 35A-4-311.

(e) The service is performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if:

(i) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(8), solely by reason of Section 3306(c)(8) of that act; and

(ii) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(f)(i) The service is performed outside of the United States, except in Canada, in the employ of an American employer, other than service that is considered employment under the provisions of Subsection (2) or the parallel provisions of another state's law if:

(A) the employer's principal place of business in the United States is located in this state;

(B) the employer has no place of business in the United States but is:

(I) an individual who is a resident of this state;

(II) a corporation that is organized under the laws of this state; or

(III) a partnership or trust in which the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(C) none of the criteria of Subsections (2)(f)(i)(A) and (B) is met but;

(I) the employer has elected coverage in this state; or

(II) the employer fails to elect coverage in any state and the individual has filed a claim for benefits based on that service under the law of this state.

(ii) "American employer" for purposes of Subsection (2) means a person who is:

(A) an individual who is a resident of the United States;

(B) a partnership if 2/3 or more of the partners are residents of the United States;

(C) a trust if all of the trustees are residents of the United States;

(D) a corporation organized under the laws of the United States or of any state;

(E) a limited liability company organized under the laws of the United States or of any state;

(F) a limited liability partnership organized under the laws of the United States or of any state; or

(G) a joint venture if 2/3 or more of the members are individuals, partnerships, corporations, limited liability companies, or limited liability partnerships that qualify as American employers.

(g) The service is performed:

(i) by an officer or member of the crew of an American vessel on or in connection with the vessel; and

(ii) the operating office from which the operations of the vessel, operating on navigable waters within, or within and without, the United States, is ordinarily and regularly supervised, managed, directed, and controlled within this state.

(h) A tax with respect to the service in this state is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or that, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required to be covered under this chapter.

(i)(i) Notwithstanding Subsection 35A-4-205(1)(p), the service is performed:

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry cleaning services, for the driver's principal; or

(B) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged on a full-time basis in the solicitation on behalf of and the transmission to the salesman's principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(ii) The term "employment" as used in this Subsection (2) includes services described in Subsection (2)(i)(i) performed only if:

(A) the contract of service contemplates that substantially all of the services are to be performed personally by the individual;

(B) the individual does not have a substantial investment in facilities used in

connection with the performance of the services other than in facilities for transportation;
and

(C) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(j) The service is performed by an individual in agricultural labor as defined by Section 35A-4-206.

(k) The service is domestic service performed in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of \$1,000 or more during any calendar quarter in either the current calendar year or the preceding calendar year to individuals employed in the domestic service.

(3) Services performed by an individual for wages or under any contract of hire, written or oral, express or implied, are considered to be employment subject to this chapter, unless it is shown to the satisfaction of the division that:

(a) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of hire for services; and

(b) the individual has been and will continue to be free from control or direction over the means of performance of those services, both under the individual's contract of hire and in fact.

(4) If an employer, consistent with a prior declaratory ruling or other formal determination by the division, has treated an individual as independently established and it is later determined that the individual is in fact an employee, the department may be rule provide for waiver of the employer's retroactive liability for contributions with respect to wages paid to the individual prior to the date of the division's later determination, except to the extent the individual has filed a claim for benefits.

(5) Notwithstanding any other provisions of this chapter, and in accordance with rules made by the department, if two or more related corporations concurrently employ the same individual and compensate the individual through a common paymaster that is one of the corporations, each corporation:

(a) is considered to have paid as remuneration to the individual only the amounts actually disbursed by it to the individual; and

(b) is not be (sic) considered to have paid as remuneration to the individual amounts actually disbursed to the individual by another of the other related corporations.

35A-4-208. Wages Defined.

(1) As used in this chapter, "wages" means wages as currently defined by Section 3306(b), Internal Revenue Code of 1986, with modifications, subtractions, and adjustments provided in Subsections (2), (3), and (4).

(2) For purposes of Section **35A-4-303**, "wages" does not include that amount paid to an individual by an employer with respect to employment subject to this chapter that is in excess of 75% of the insured average fiscal year wage, rounded to the next higher multiple of \$100, during the fiscal year prior to the calendar year of the payment to the individual by the individual's employer on or after January 1, 1988.

(3) For the purpose of determining whether the successor employer during the calendar year has paid remuneration to an individual with respect to employment equal to the applicable taxable wages as defined by this Subsection (3), any remuneration with respect to employment paid to the individual by a predecessor employer during the calendar year and prior to an acquisition is considered to have been paid by a successor employer if:

(a) the successor employer during any calendar year acquires the unemployment experience within the meaning of Subsection **35A-4-303**(8) or **35A-4-304**(3) of a predecessor employer; and

(b) immediately after the acquisition employs in the successor employer's trade or business an individual who immediately prior to the acquisition was employed in the trade or business of the predecessor.

(4) The remuneration paid to an individual by an employer with respect to employment in another state, upon which contributions were required of the employer under the unemployment compensation law of that state, shall be included as a part of the taxable wage base defined in this section.

(5) As used in this chapter, "wages" does not include:

(a) the amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for a payment, made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer that makes provision for:

(i) (A) the employer's employees generally;

(B) the employer's employees generally and their dependents;

(C) a class or classes of the employer's employees; or

(D) a class or classes of the employer's employees and their dependents; and

(ii) on account of:

(A) sickness or accident disability, but, in the case of payments made to an employee or any of the employee's dependents, Subsection (5)(a)(i) excludes from wages only payments that are received under a workers' compensation law;

(B) medical or hospitalization expenses in connection with sickness or accident disability; or

(C) death;

(b) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for the employer;

(c) the payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon an individual in its employ under Section 3101, Internal Revenue Code, with respect to domestic services performed in a private home of the employer or for agricultural labor;

(d) any payment made to, or on behalf of, an employee or the employee's beneficiary:

(i) from or to a trust described in Section 401(a), Internal Revenue Code, that is exempt from tax under Section 501(a), Internal Revenue Code, at the time of the payment, except for a payment made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust;

(ii) under or to an annuity plan that at the time of the payment is a plan described in Section 403(a), Internal Revenue Code;

(iii) under a simplified employee pension, as defined in Section 408(k)(1), Internal Revenue Code, other than any contributions described in Section 408(k)(6), Internal Revenue Code;

(iv) under or to an annuity contract described in Section 403(b), Internal Revenue Code, except for a payment for the purchase of the contract that is made by reason of a salary reduction agreement whether or not the agreement is evidenced by a written instrument;

(v) under or to an exempt governmental deferred compensation plan as defined in Section 3121(v)(3), Internal Revenue Code; or

(vi) to supplement pension benefits under a plan or trust described in Subsections (5)(d)(i) through (v) to take into account a portion or all of the increase in the cost of living, as determined by the Secretary of Labor, since retirement, but only if the supplemental payments are under a plan that is treated as a welfare plan under Section 3(2)(B)(ii) of the Employee Income Security Act of 1974; or

(e) any payment made to, or on behalf of, an employee or the employee's beneficiary under a cafeteria plan within the meaning of Section 125, Internal Revenue Code, if the payment would not be treated as wages under a cafeteria plan.

35A-4-508. Review of decision or determination by division -- Administrative law judge -- Division of adjudication -- Workforce Appeals Board -- Judicial review by Court of Appeals -- Exclusive procedure.

(8)(a) Within 30 days after the decision of the Workforce Appeals Board is issued, any aggrieved party may secure judicial review by commencing an action in the court of appeals against the Workforce Appeals Board for the review of its decision, in which action any other party to the proceeding before the Workforce Appeals Board shall be made a defendant.

(b) In that action a petition, that shall state the grounds upon which a review is sought, shall be served upon the Workforce Appeals Board or upon that person the Workforce Appeals Board designates. This service is considered completed service on all parties but there shall be left with the party served as many copies of the petition as there are defendants and the Workforce Appeals Board shall mail one copy to each defendant.

(c) With its answer, the Workforce Appeals Board shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with its findings of fact and decision, in accordance with the requirements of the Utah Rules of Appellate Procedure.

(d) The Workforce Appeals Board may certify to the court questions of law involved in any decision by the board.

(e) In any judicial proceeding under this section, the findings of the Workforce Appeals Board as to the facts, if supported by evidence, are conclusive and the jurisdiction of the court is confined to questions of law.

(f) It is not necessary in any judicial proceeding under this section to enter exceptions to the rulings of the division, an administrative law judge, Workforce Appeals Board and no bond is required for entering the appeal.

(g) Upon final determination of the judicial proceeding, the division shall enter an order in accordance with the determination. In no event may a petition for judicial review act as a supersedeas.

35A-4-508. Review of decision or determination by division -- Administrative law judge -- Division of adjudication -- Workforce Appeals Board -- Judicial review by Court of Appeals -- Exclusive procedure.

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63G-4-403. Judicial review -- Formal adjudicative proceedings.

(1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.

(2) (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

(3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

(b) the appellate court may tax the cost of preparing transcripts and copies for the record:

(i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(ii) according to any other provision of law.

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;

(b) the agency has acted beyond the jurisdiction conferred by any statute;

(c) the agency has not decided all of the issues requiring resolution;

(d) the agency has erroneously interpreted or applied the law;

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;

(f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;

(h) the agency action is:

(i) an abuse of the discretion delegated to the agency by statute;

(ii) contrary to a rule of the agency;

(iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or

(iv) otherwise arbitrary or capricious.

78A-4-103. Court of Appeals jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

Part	
II	Private foundations
III	Taxation of business income of certain exempt organizations
IV	Farmers' cooperatives
V	Shipowners' protection and indemnity associations
VI	Political organizations
VII	Certain homeowners associations
VIII	Higher education savings entities

AMENDMENTS

1997—Pub L 105-34, title II, § 211(e)(1)(B), Aug 5, 1997, 111 Stat 812, substituted "Higher education savings entities" for "Qualified State tuition programs" in part VIII heading

1996—Pub L 104-188, title I, § 1806(b)(2), Aug 20, 1996, 110 Stat 1898, added part VIII heading

1976—Pub L 94-455, title XXI, § 2101(d), Oct 4, 1976, 90 Stat 1899, added part VII heading

1975—Pub L 93-625, § 10(d), Jan 3, 1975, 88 Stat 2119, added part VI heading

1969—Pub L 91-172, title I, § 101(j)(58), Dec 30, 1969, 83 Stat 532, added part II heading, and redesignated former parts II, III and IV as parts III, IV and V, respectively

PART I—GENERAL RULE

Sec	
501	Exemption from tax on corporations, certain trusts, etc
502	Feeder organizations
503	Requirements for exemption
504	Status after organization ceases to qualify for exemption under section 501(c)(3) because of substantial lobbying or because of political activities
505	Additional requirements for organizations described in paragraph (9), (17), or (20) of section 501(c)

AMENDMENTS

1987—Pub L 100-203, title X, § 10711(b)(2)(B), Dec 22, 1987, 101 Stat 1330-464, substituted "substantial lobbying or because of political activities" for "substantial lobbying" in item 504

1984—Pub L 98-369, div A, title V, § 513(b), July 18, 1984, 98 Stat 865, added item 505

1976—Pub L 94-455, title XIII, § 1307(d)(3)(B), Oct 4, 1976, 90 Stat 1728, added item 504

1969—Pub L 91-172, title I, § 101(j)(61) Dec 30, 1969, 83 Stat 532, struck out item 504 "Denial of exemption"

§ 501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation

An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503

(b) Tax on unrelated business income and certain other activities

An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes

(c) List of exempt organizations

The following organizations are referred to in subsection (a)

- (1) Any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (1)

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section. Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office

(4)(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes

(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual

(5) Labor, agricultural, or horticultural organizations

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

ployee's employment relationship had not been so terminated,

(11) remuneration for agricultural labor paid in any medium other than cash,

(12) any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans),

(13) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127, 129, 134(b)(4), or 134(b)(5),

(14) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119,

(15) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died,

(16) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132,

(17) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b),

(18) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d),

(19) remuneration on account of—

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

(B) any disposition by the individual of such stock, or

(20) any benefit or payment which is excludable from the gross income of the employee under section 139B(b)

Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages. Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter

(c) Employment

For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subparagraph C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except—

(1) agricultural labor (as defined in subsection (k)) unless—

(A) such labor is performed for a person who—

(i) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)), or

(ii) on each of some 20 days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)) for some portion of the day (whether or not at the same moment of time) 10 or more individuals, and

(B) such labor is not agricultural labor performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act,

(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for a person who paid cash remuneration of \$1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year,

(3) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter,

(4) service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States,

(5) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother,

(6) service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) wholly or partially owned by the United States, or

(B) exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption,

(7) service performed in the employ of a State, or any political subdivision thereof, or in the employ of an Indian tribe, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions or Indian tribes, and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301,

(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a),

(9) service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (45 U S C 351),

(10)(A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than \$50, or

(B) service performed in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance, or

(C) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers, or

(D) service performed in the employ of a hospital, if such service is performed by a patient of such hospital,

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative),

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof, and

(B) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof,

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law, and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law,

(14) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission,

(15)(A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution,

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited

R994-403-120e. Employer's Responsibility.

Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.

R994-508-109. Hearing Procedures.

(1) All hearings will be conducted before an ALJ in such manner as to provide due process and protect the rights of the parties.

(2) The hearing will be recorded.

(3) The ALJ will regulate the course of the hearing to obtain full disclosure of relevant facts and to afford the parties a reasonable opportunity to present their positions.

(4) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(5) All testimony of the parties and witnesses will be given under oath or affirmation.

(6) All parties will be given the opportunity to provide testimony, present relevant evidence which has probative value, cross-examine any other party and/or other party's witnesses, examine or be provided with a copy of all exhibits, respond, argue, submit rebuttal evidence and/or provide statements orally or in writing, and/or comment on the issues.

(7) The evidentiary standard for ALJ decisions, except in cases of fraud, is a preponderance of the evidence. Preponderance means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. The evidentiary standard for determining claimant fraud is clear and convincing evidence. Clear and convincing is a higher standard than preponderance of the evidence and means that the allegations of fraud are highly probable.

(8) The ALJ will direct the order of testimony and rule on the admissibility of evidence. The ALJ may, on the ALJ's own motion or the motion of a party, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(9) Oral or written evidence of any nature, whether or not conforming to the rules of evidence, may be accepted and will be given its proper weight. A party has the responsibility to present all relevant evidence in its possession. When a party is in possession of evidence but fails to introduce the evidence, an inference may be drawn that the evidence does not support the party's position.

(10) Official Department records, including reports submitted in connection with the administration of the Employment Security Act, may be considered at any time in the appeals process including after the hearing.

(11) Parties may introduce relevant documents into evidence. Parties must mail, fax, or deliver copies of those documents to the ALJ assigned to hear the case and all other interested parties so that the documents are received three days prior to the hearing. Failure to prefile documents may result in a delay of the proceedings. If a party has good cause for not submitting the documents three days prior to the hearing or if a party does not receive the documents sent by the Appeals Unit or another party prior to the hearing, the documents will be admitted after provisions are made to insure due process is satisfied. At his or her discretion, the ALJ can either:

- (a) reschedule the hearing to another time;
- (b) allow the parties time to review the documents at an in-person hearing;
- (c) request that the documents be faxed during the hearing, if possible, or read the material into the record in case of telephone hearing; or
- (d) leave the record of the hearing open, send the documents to the party or parties who did not receive them, and give the party or parties an opportunity to submit additional evidence after they are received and reviewed.

(12) The ALJ may, on his or her own motion, take additional evidence as is deemed necessary.

(13) With the consent of the ALJ, the parties to an appeal may stipulate to the facts involved. The ALJ may decide the appeal on the basis of those facts, or may set the matter for hearing and take further evidence as deemed necessary to decide the appeal.

(14) The ALJ may require portions of the testimony be transcribed as necessary for rendering a decision.

(15) All initial determinations made by the Department are exempt from the provisions of the Utah Administrative Procedures Act (UAPA). Appeals from initial determinations will be conducted as formal adjudicative proceedings under UAPA.

R994-508-305. Decisions of the Board.

(1) The Board has the discretion to consider and render a decision on any issue in the case even if it was not presented at the hearing or raised by the parties on appeal.

(2) Absent a showing of unusual or extraordinary circumstances, the Board will not consider new evidence on appeal if the evidence was reasonably available and accessible at the time of the hearing before the ALJ.

(3) The Board has the authority to request additional information or evidence, if necessary.

(4) The Board may remand the case to the Department or the ALJ when appropriate.

(5) A copy of the decision of the Board, including an explanation of the right to judicial review, will be delivered or mailed to the interested parties.



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State of Utah
Department of
Workforce Services

Gary R. Herbert
Governor

Gregory S. Bell
Lieutenant Governor

KRISTEN COX
Executive Director

CHRISTOPHER W. LOVE
Deputy Director

GREGORY B. GARDNER
Deputy Director

C 5-440433-0

November 23, 2009

Gregory Allen Lowrey
DBA Happy Valley Tattoo and Piercing
275 E State Rd
American Fork UT 84003-2434

Dear Employer:

This letter is in reference to the recent investigation I conducted Happy Valley Tattoo and Piercing for the Utah Department of Workforce Services covering 2008 and 2009 with the claimant Jacklyn N Emmett Johnson SSN 257-81-2283.

Wages for employment are subject to unemployment insurance unless the service is specifically excluded by statute or if the service meets the exclusionary provisions of Section 35A-4-204(e)(i)(ii) of the Utah Employment Security Act. This section states in pertinent part:

- (e) The service is performed by an individual in the employee of a religious, charitable, educational, or other organization, but only if:
 - (i) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C 3306(c) (8), solely by reason of Section 3306(c)(8) of that act; and
 - (ii) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or proceeding calendar year, regardless of whether they were employed at the same moment of time.

IRC Section 501(C)(3). IRC section 501(c)(3) describes charitable organizations, including churches and religious organizations, which qualify for exemption from

federal income tax and generally are eligible to receive tax-deductible contributions. This section provides that:

- an organization must be organized and operated exclusively for religious or other charitable purposes,
- net earnings may not inure to the benefit of any private individual or shareholder,
- no substantial part of its activity may be attempting to influence legislation,
- the organization may not intervene in political campaigns, and
- the organization's purposes and activities may not be illegal or violate fundamental public policy.

Based on information the Department has received there have been more than four or more individuals actively working for the company over a 20 week time period and therefore Happy Valley Tattoo and Piercing no longer meets the church organization exemption and any wages paid are subject to unemployment insurance.

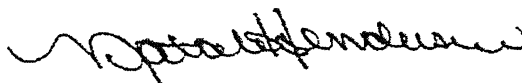
It is my determination that the claimant Jacklyn N Emmett Johnson and any other individuals performing services for 2008 and 2009 are subject to unemployment insurance and wages must be reported to our office as the employer has not shown documentation to show it meets the IRS requirements to be considered a church.

You may file these reports via our website of www.jobs.utah.gov/ui . If you do not have access to the internet or need assistance with the filing of these reports please contact me at the number below.

This decision will become final unless, within fifteen (15) days from the date of mailing, a written appeal is made setting forth the grounds upon which the appeal is made, the relief requested, and the date the appeal is mailed. Mail appeals to: Workforce Services-Field Audit, P.O. Box 45288, Salt Lake City, UT 84145-0288.

Thank you for your cooperation. Please feel free to call or contact me if you should have any questions concerning the unemployment insurance program.

Sincerely,



Natalie Henderson
Field Auditor
801-374-7845

Date Mailed: November 24, 2009

DEPARTMENT OF WORKFORCE SERVICES
APPEALS UNIT

Decision of Administrative Law Judge

Appellant

Claimant

GREGORY ALLEN LOWERY
275 E STATE RD
AMERICAN FORK UT 84003-2434

JACKLYN N EMMETT JOHNSON
640 SPRUCE ST
PLEASANT GROVE UT 84062-3715

EMPLOYER NO: 440433-0

CASE NO: 09-A-19944-T

APPEAL DECISION: The appeal was timely.

The Claimant provided a personal service for a wage which is subject to unemployment insurance contributions.

CASE HISTORY:

Appearances:	Appellant/Department Representative		
Date of Initial Determination:	October 1, 2009		
Date of Appeal:	October 9, 2009		
Issues to be Decided:	R994-508	-	Timeliness of Appeal
	35A-4-406(2)	-	Continuing Jurisdiction
	35A-4-208	-	Service for a Wage
	35A-4-204(1)	-	Contract of Hire
	35A-4-204(3)	-	Independent Contractor

The original Department determination held that Jacklyn N. Emmett Johnson, the Claimant, provided a personal service for a wage which constituted employment.

APPEAL RIGHTS: The following decision will become final unless, within **30 days** from **May 10, 2010**, further written appeal is received by the Workforce Appeals Board (PO Box 45244, Salt Lake City, UT 84145-0244; FAX 801-526-9244; or online at <http://www.jobs.utah.gov/appeals>) setting forth the grounds upon which the appeal is made.

FINDINGS OF FACT:

Timeliness of Appeal

The investigation determination was mailed to the Appellant on November 24, 2009. The determination contained the following information:

This decision will become final unless, within fifteen (15) days from the date of mailing, a written appeal is made setting forth the grounds upon which the appeal is made, the relief requested, and the date the appeal is mailed.

The appellants appeal was submitted prior to the appeal deadline.

Worker Status

The Claimant worked as an employee of and an assistant to Gregory Allen Lowrey, doing business as Happy Valley Tattoo. The Claimant performed secretarial and cleaning duties.

Mr. Lowrey also operates the religious entity UBU Ministries, formerly known as Whole Life Ministries. The art of tattooing is held as one of the religion's doctrinal tenets. Tattoo services are performed in the same facility the ministry conducts its religious services. None of the entities operated by Mr. Lowrey have an IRS exemption and none are recognized as religion by any government agency.

REASONING AND CONCLUSIONS OF LAW:

Timeliness of Appeal

Exhibit 23 is a copy of the envelope in which the Appellant sent its appeal. The post mark is unreadable. The date "12/9/09" is hand written next to the post mark, though neither party knew who wrote the date on the envelope. The introduction to the appeal, Exhibit 20, indicates that the determination was received by the Appellant on December 7, 2009, but there is no further information contained in the appeal indicating when the appeal was mailed. Mr. Lowrey was unable to remember the date he mailed the appeal and the auditor was unable to indicate when the appeal was received.

The Administrative Law Judge finds that there is insufficient information to show that the appeal was late. On this basis, the Administrative Law Judge finds that pursuant to Section 35A-4-406(2) of the Utah Employment Security Act the appeal was submitted timely.

Worker Status

Mr. Lowrey conceded that the Claimant was paid a wage and that she was an employee. However, he argued that the Claimant was an employee of a recognized religious institution and that wages paid to her were exempt from state unemployment tax. Mr. Lowrey submitted as evidence several IRS publications which address the exempt status of religions. He also submitted a precedent case in which another local religious institution was determined exempt from taxes. Mr. Lowrey confirmed that none of the entities which he operates have a 501(c)3 exemption, but his position was that by merely claiming the institution is a religion is sufficient to obtain exemption under the law. He also testified that in the past the Department of Workforce Services issued a determination in which it determined the Appellant was not subject to state unemployment tax. The auditor found no evidence of such a determination and Mr. Lowrey provided no evidence of the determination or any other evidence that a government agency recognized the Appellant as a legitimate religion.

Gregory Allen Lowrey
09-A-19944-T

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Since Mr. Lowrey does not dispute Sections 35A-4-208, 35A-4-204(1), 35A-4-204(3) of the Utah Employment Security Act, the Administrative Law Judge finds no reason to analyze the status of the Claimant's employment. The Claimant provided a personal service for a wage and absent any evidence which exempts the Appellant from reporting those wages, the wages are subject to unemployment insurance contributions.

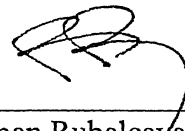
DECISION AND ORDER:

Timeliness of Appeal

The appeal was timely within the requirements of Rule R994-508. The Administrative Law Judge, therefore, has jurisdiction to consider the matter appealed.

Worker Status

The Department's decision holding that the Claimant performed a service for a wage, constituting employment subject to unemployment insurance coverage, pursuant to Sections 35A-4-204(1), 35A-4-208, and 35A-4-204(3) of the Utah Employment Security Act is affirmed.



Roman Rubalcava
Administrative Law Judge
DEPARTMENT OF WORKFORCE SERVICES

Issued: May 10, 2010

RR/ap

Form BRDEC

WORKFORCE APPEALS BOARD
Department of Workforce Services
Division of Adjudication

GREGORY ALLEN LOWREY

Employer No. 4-40433-0

:

Case No. 10-B-00769-T

:

DEPARTMENT OF WORKFORCE SERVICES

DECISION OF WORKFORCE APPEALS BOARD:

The decision of the Administrative Law Judge is affirmed.

Services performed by Claimant constitute employment subject to coverage.

HISTORY OF CASE:

In a decision dated May 10, 2010, Case No. 09-A-19944-T, the Administrative Law Judge affirmed a Department decision holding that services performed by the Claimant as an assistant to Gregory Allen Lowrey, doing business as Happy Valley Tattoo, constituted employment subject to unemployment insurance coverage.

JURISDICTION OF WORKFORCE APPEALS BOARD:

The Workforce Appeals Board has authority to review the Administrative Law Judge's decision pursuant to §35A-4-508(4) and (5) of the Utah Employment Security Act and the Utah Administrative Code (1997) pertaining thereto.

EMPLOYER APPEAL FILED: June 9, 2010.

ISSUE BEFORE WORKFORCE APPEALS BOARD AND APPLICABLE PROVISION OF UTAH EMPLOYMENT SECURITY ACT:

Were the services performed by the Claimant on behalf of the Employer considered employment subject to unemployment insurance coverage pursuant to the provisions of §§35A-4-204 and 35A-4-208?

FACTUAL FINDINGS:

The Workforce Appeals Board adopts in full the factual findings of the Administrative Law Judge.

REASONING AND CONCLUSIONS OF LAW:

This appeal arose from an investigation by the Department of an unemployment insurance claim filed against Happy Valley Tattoo and Piercing (Happy Valley) by an alleged former employee

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GREGORY ALLEN LOWREY

(Claimant). Upon discovering no unemployment insurance contributions had been made for the Claimant upon wages paid during her employment the Department commenced an investigation which resulted in the Department issuing a decision letter to Mr. Gregory Allen Lowrey (Lowrey) who, along with his wife Kita Lowrey, are the only identifiable principals connected to Happy Valley Tattoo and Piercing by the record in this case.

The Department letter found that Lowrey had not furnished documentation to establish that the Internal Revenue Service (IRS) had made a determination that Happy Valley met the necessary requirements to be considered an exempt religious organization. The Department also determined that the organization was not entitled to an exemption under Utah law. Lowrey appealed the Department determination for an Administrative Law Judge hearing.

Since there is insufficient documentary evidence in the record to establish any legal entities other than Happy Valley and Lowrey, for simplicity in this decision the Board will use Happy Valley when referencing the employing unit and Lowrey when referencing the principal of all of the entities involved in this case.

As the appealing party in this matter, Lowrey has the burden of establishing by a preponderance of the evidence that the Judge erred in his decision upholding the Department's finding the Claimant's work for Happy Valley was covered employment under the applicable law and rules. In order to prevail the record must be found to support Lowrey's position that Happy Valley was the DBA (doing business as) alter-ego of a religious organization, and that its employees were engaged in exempt employment and therefore not eligible for unemployment insurance benefits under state and federal law.

As stated above, for this decision "Lowrey" will, for the purposes of this decision, be used as an alternative reference inclusive of Gregory Allen Lowrey, Kita Lowrey, UBU Ministries, Whole Life Ministries, Happy Valley Tattoo and Piercing, and The Gift of Hope, LLC.

There is no issue in this case requiring a determination of whether the Claimant, who worked as a receptionist and personal assistant for Lowrey at Happy Valley, was an independent contractor. Although Lowrey denies it in the appeal, Lowrey testified, under oath, that the Claimant had been an employee of Happy Valley. Lowrey also framed the issue for this appeal to the Workforce Appeals Board in his response to the Judge's questioning:

JUDGE Who did she (Claimant) actually perform services for, was it for the church, or for the tattoo shop?

LOWREY There – there's no difference. The – **she performed the services – she was an employee. And I don't have any – I don't have any question about, you know – or dispute about whether or not she was an employee. It's just that she – the question is who she was**

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GREGORY ALLEN LOWREY

an employee of. And so she was an employee of the church, of Whole Life Ministries. And last year we changed our name to – from Whole Life Ministries to UBU Ministries. But– (Emphasis added).

JUDGE What does UBU stand for?

LOWREY It stands for – it's UBU, uncle bob uncle, and it stands for UBU.

LOWREY In my own mind is that if - she was considered an employee all the way through to the time she was fired.

The basis of Lowrey's lengthy appeal is that the Claimant was an employee of a self-declared church, and therefore legally exempt from the payment of unemployment contributions and the employees of Happy Valley were working in exempt employment and not covered by unemployment insurance laws. Lowrey further argues that the Claimant was employed by UBU Ministries rather than either Gregory Allen Lowrey or the Happy Valley.

The only official documents contained in the record before the Board are copies of recorded filings made with the Utah Department of Commerce, Division of Corporations and Commercial Code. It is noted that under Utah law the Division of Corporations is a good-faith filing office and is only responsible for the form on which information is submitted, and has no responsibility for the veracity of the content of the filings submitted to it for recording.

The official records of the State of Utah in the appeal record reflect that UBU Ministries is purportedly a member of a Limited Liability Company (LLC) named The Gift of Hope, LLC. The records further show that Happy Valley Tattoo and Piercing has been registered as a DBA since October 30, 2001, with Gregory Lowrey listed as the Registered Agent. The 2001 application for the Business Name Registration/DBA Application for Happy Valley Tattoo and Piercing shows Gregory Lowrey and Kita Lowrey as the applicant/owners of Whole Life Ministries which was to be the owner of the DBA.

The record before the Board contains no official documents on file with the Division of Corporations for the purported entities The Gift of Hope, LLC; Whole Life Ministries; or UBU Ministries. Although Lowrey had the burden of proof in this matter, it was not established that the alleged entities actually existed, beyond a snippet in Lowrey's brief purporting to be taken from the Articles of Incorporation of Whole Life Ministries.

The transcript of the hearing shows that the Judge sought information about Happy Valley having been determined to be an exempt religious organization under either state or federal law. Lowrey testified that Happy Valley had been determined to be an exempt religious organization as a result of an IRS audit, and also found exempt by the Department, but no evidence was produced to support these alleged findings, and the Department could locate no proof to support Lowrey's claims.

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GREGORY ALLEN LOWREY

If Lowrey actually possessed and had produced IRS and Department determinations that Happy Valley had been ruled an exempt religious organization, it would have been conclusive proof that would have simply resolved this issue. However, instead of providing convincing evidence of any such rulings, Lowrey chooses again on appeal to the Board to reiterate the position presented at the Administrative Law Judge hearing that bits and pieces of language drawn from various IRS publications justify a reasonable claim of exemption.

The state law exempting employment such as claimed in this appeal is Utah Code Ann. §35A-4-205, which provides in pertinent part:

(1) If the services are also exempted under the Federal Unemployment Tax Act, as amended, employment does not include:

(g) for the purposes of Subsections 35A-4-204(2)(d) and (e), service performed:

(i) in the employ of:

(A) a church or convention or association of churches; or

(B) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

The above referenced Utah Code Ann. 35A-4-204(e) provides:

(1) Subject to the other provisions of this section, "employment" means any service performed for wages or under any contract of hire, whether written or oral, express or implied, including service in interstate commerce, and service as an officer of a corporation.

(2) "Employment" includes an individual's entire service performed within or both within and without this state if one of Subsections 2(a) through (k) is satisfied. . . .

(e) The service is performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if:

(i) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(8), solely by reason of Section 3306(c)(8) of that act; and

(ii) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

In other words, the wages paid to an employee are subject to unemployment contribution payments unless excluded by 26 U.S.C. 3306(c)(8), as the only applicable exclusionary reason, if the employee requirements of (ii) are met.

The federal law referenced in the state statute, 26 U.S.C. 3306(c)(8), provides that "service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a)."

Mr. Lowrey testified that Happy Valley had never applied for recognition nor been determined to be a 501(c)(3) organization by the Internal Revenue Service, nor did he show that all of the income from Happy Valley was being used for charitable purposes as defined by the IRS. He also failed to provide any proof that Happy Valley had been determined to be exempt from the Utah unemployment insurance laws.

The IRS sets out the minimum requirements for an organization such as Happy Valley that have to be met for exemption from taxes:

Organizational Test - Internal Revenue Code Section 501(c)(3)

To be organized exclusively for a charitable purpose, the organization must be a corporation (or unincorporated association), community chest, fund, or foundation. A charitable trust is a fund or foundation and will qualify. However, an individual will not qualify. The organizing documents must limit the organization's purposes to exempt purposes set forth in section 501(c)(3) and must not expressly empower it to engage, other than as an insubstantial part of its activities, in activities that are not in furtherance of one or more of those purposes. This requirement may be met if the purposes stated in the organizing documents are limited in some way by reference to section 501(c)(3).

In addition, an organization's assets must be permanently dedicated to an exempt purpose. This means that if an organization dissolves, its assets must be distributed for an exempt purpose, to the federal government, or to a state or local government for a public purpose. To establish that an organization's assets will be permanently dedicated to an exempt purpose, its organizing documents should contain a provision ensuring their distribution for an exempt purpose in the event of dissolution. If a specific organization is designated to receive the organization's assets upon dissolution, the organizing document must state that the named organization must be a section 501(c)(3) organization when the assets are distributed. Although reliance may in some cases be placed upon state law to establish permanent dedication of assets for exempt purposes, an organization's application can be processed by the IRS more rapidly if its organizing documents include a provision ensuring permanent dedication of assets for exempt purposes. For examples of provisions that meet these requirements, see *Charity - Required Provisions for Organizing Documents*.

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GREGORY ALLEN LOWREY

If Lowrey truly believed Happy Valley constituted an exempt religious organization there are options available under both federal and Utah law to receive that official recognition. Lowrey could have applied for 501(c)(3) recognition which would have been effective until the IRS made a determination either granting or denying that recognition. Utah law also provides a means for an organization to obtain recognition of exempt status:

35A-4-313 Determination of employer and employment.

The division or its authorized representatives may, upon its own motion or upon application of an employing unit, determine whether an employing unit constitutes an employer and whether services performed for, or in connection with the business of, an employer constitute employment for the employing unit. The determinations may constitute the basis for determination of contribution liability under Subsection 35A-4-305(2) and be subject to review and appeal as provided.

R994-202-101. Legal Status of Employing Unit.

The Department may, on its own motion or if requested by an employer, determine the legal status of an employing unit according to Section 35A-4-313. The determination will be based on the best available information including, registration forms, income tax returns, financial and business records, regulatory licenses, legal documents, and information from the involved parties. The Department's determination is subject to review and may be appealed according to rule R994-508, Appeal Procedures.

The Board cannot find that Lowrey established, by a preponderance of the evidence, that Happy Valley was an exempt religious organization. Lowrey also raises constitutional issues in his brief that the Board, as an administrative tribunal, is not able to address. Constitutional issues can only be addressed in a court of law, such as the Utah Court of Appeals, to which a next level appeal would be directed.

The Board has thoroughly reviewed the testimony and exhibits in the record before it, and cannot find that the appealing party has established that the Judge erred in his decision in this case. Therefore, the Workforce Appeals Board adopts in full the reasoning, conclusion of law, and decision of the Administrative Law Judge.

DECISION:

The decision of the Administrative Law Judge holding the Claimant to have received a wage, to have been in employment, and to have not been an independent contractor for Gregory Allen Lowrey, doing business as Happy Valley Tattoo, pursuant to the provisions of §§35A-4-204 and 35A-4-208 of the Utah Employment Security Act, is affirmed.

10-B-00769-T

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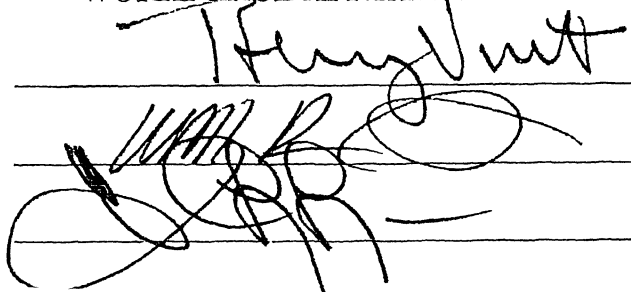
GREGORY ALLEN LOWREY

APPEAL RIGHTS:

Pursuant to §63-46b-13(1)(a) of the Utah Administrative Procedures Act, you may request reconsideration of this decision within 20 days from the date this decision is issued. Your request for reconsideration must be in writing and must state the specific grounds upon which relief is requested. The request must be filed with the Workforce Appeals Board at 140 East 300 South, Salt Lake City, Utah, or may be mailed to the Workforce Appeals Board at P.O. Box 45244, Salt Lake City, Utah 84145-0244. A copy of the request for reconsideration must also be mailed to each party by the person making the request. If the Workforce Appeals Board does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied pursuant to §63-46b-13(3)(b) of the Utah Administrative Procedures Act. The filing of a request for reconsideration is not a prerequisite for seeking judicial review of this order. If a request for reconsideration is made, the Workforce Appeals Board will issue another decision. This decision will set forth the rights of further appeal to the Court of Appeals and time limitation for such an appeal.

You may appeal this decision to the Utah Court of Appeals. Your appeal must be submitted in writing within 30 days of the date this decision is issued. The Court of Appeals is located on the fifth floor of the Scott M. Matheson Courthouse, 450 South State Street, P. O. Box 140230, Salt Lake City, Utah 84114-0230. The appeal must show the Workforce Appeals Board, Department of Workforce Services and any other party to the proceeding as Respondents. To file an appeal with the Court of Appeals, you must submit to the Clerk of the Court a Petition for Writ of Review setting forth the reasons for appeal, pursuant to §35A-4-508(8) of the Utah Employment Security Act; §63-46b-16 of the Utah Administrative Procedures Act; and Rule 14 of the Utah Rules of Appellate Procedure, followed by a Docketing Statement and a Legal Brief as required by Rules 9 and 24-27, Utah Rules of Appellate Procedure.

WORKFORCE APPEALS BOARD



Date Issued: July 13, 2010

TV/TL/WS/RR/MRM/cd

10-B-00769-T

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4-40433-0

GREGORY ALLEN LOWREY

MAILING CERTIFICATE

I hereby certify that I caused a true and correct copy of the foregoing DECISION to be served upon each of the following on this 13th day of July, 2010, by mailing the same, postage prepaid, United States mail to:

GREGORY ALLEN LOWREY
275 E STATE RD
AMERICAN FORK UT 84003-2434

JACKLYN EMMETT JOHNSON
640 SPRUCE ST
PLEASANT GROVE UT 84062-3715



orm BRDEC

WORKFORCE APPEALS BOARD
Department of Workforce Services
Division of Adjudication

GREGORY ALLEN LOWREY

Employer No. 4-40433-0

:

Case No. 10-R-01014-T

:

RECONSIDERATION

DEPARTMENT OF WORKFORCE

SERVICES

:

DECISION OF WORKFORCE APPEALS BOARD:

Employer's request for reconsideration is denied.

HISTORY OF CASE:

In a letter faxed August 2, 2010, Employer, Gregory Allen Lowrey, requested reconsideration of the decision of the Workforce Appeals Board issued in this case on July 13, 2010. The decision of the Workforce Appeals Board was based on a review of a decision of an Administrative Law Judge after a formal hearing.

JURISDICTION OF WORKFORCE APPEALS BOARD:

The Board has jurisdiction to review the request for reconsideration pursuant to Utah Code Annotated §63-46b-13(3) on the grounds that the Board's decision was final agency action within the meaning and intent of that section of law.

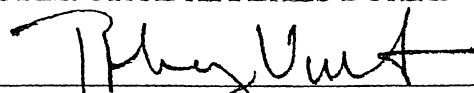
DECISION:

The Employer's request for a 60-day extension of time and request for reconsideration is denied. The decision of the Workforce Appeals Board dated July 13, 2010, remains in effect.

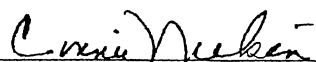
APPEAL RIGHTS:

You may appeal this decision to the Utah Court of Appeals. Your appeal must be submitted in writing within 30 days of the date this decision is issued. The Court of Appeals is located on the fifth floor of the Scott M. Matheson Courthouse, 450 South State Street, P. O. Box 140230, Salt Lake City, Utah 84114-0230. The appeal must show the Workforce Appeals Board, Department of Workforce Services and any other party to the proceeding as Respondents. To file an appeal with the Court of Appeals, you must submit to the Clerk of the Court a Petition for Writ of Review setting forth the reasons for appeal, pursuant to §35A-4-508(8) of the Utah Employment Security Act; §63-46b-16 of the Utah Administrative Procedures Act; and Rule 14 of the Utah Rules of Appellate Procedure, followed by a Docketing Statement and a Legal Brief as required by Rules 9 and 24-27, Utah Rules of Appellate Procedure.

WORKFORCE APPEALS BOARD







Date Issued: August 25, 2010

TV/TL/WS/RR/MRM/cd

R-01014-T

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4-40433-0

GREGORY ALLEN LOWREY

MAILING CERTIFICATE

I hereby certify that I caused a true and correct copy of the foregoing DECISION to be served upon each of the following on this 25th day of August, 2010, by mailing the same, postage prepaid, United States mail to:

GREGORY ALLEN LOWREY
275 E STATE RD
AMERICAN FORK UT 84003-2434

JACKLYN EMMETT JOHNSON
640 SPRUCE ST
PLEASANT GROVE UT 84062-3715

Connie Simon

Claims Investigation Worksheet

pe CLN
REGORY ALLEN LOWREY

C 5-440433-0
Printed 11/23/2009

HAF

Tax Address
75 E STATE RD
AMERICAN FORK UT 84003-2434
(801) 756-6642

Worksite Address
275 E STATE RD
AMERICAN FORK UT 84003-2434

Ownership	INDIVIDUAL	Audit	0	Rate	012
Status	ACTIVE	FEIN		New Rate	000
Subj Date	4/1/2008	SIC	7299	Amt Due	0 00
Efft Date	4/1/2008	NAICS	812199	Issues	
Term Date		Seas			
Reop Date		County	UTAH		

CONTACTS
NO RECORDS FOUND TO PRINT

INVESTIGATION INFORMATION			QTR	Wages
Status	Open			
Date Created	10/21/2009		2/2008	556 00
Assigned	10/27/2009		3/2008	1 037 00
Target Date	11/26/2009		4/2008	1,430 00
FollowUp			1/2009	3 087 00
Completed			2/2009	280 00
Assigned To	NATALIE HENDERSON			0 00

Employer Subject Y
Claimant Subject Y

SSN 257-81-2283
Name EMMETT JOHNSON, JACKLYN N Phone (801) 995-3014

Comments FORMS SENT ON 10/02/09 FOR WHOLE LIFE MINISTRIES

RCVD 624 WITH PAYSTUBS AND 11 FROM THE CLMT
RCVD 606 FROM THE EMPLOYER

ACCOUNT IS WITHDRAWN
PLEASE DETERMINE IF WAGES ARE SUBJECT TO UI

Rule / Law 35A-4-208 - DEF OF WAGES (INCL BONUS, TIP, ETC)

Findings BASED ON INFORMATION RECEIVED VIA DEPARTMENT OF COMMERCE AND ON INFORMATION RECEIVED VIA CLAIMANT THE EMPLOYER DOES NOT FALL UNDER THE RELIGIOUS ENTITY EXEMPTION AND IS SUBJECT TO UI WHOLE LIFE MINISTRIES WAS AN APPLICANT FOR HAPPY VALLEY TATTOO AND PIERCING NOT A PARENT COMPANY NO 501(C)3 WAS PROVIDED BY THE EMPLOYER
CLAIMANT HAS BEEN DETERMINED TO BE AN EMPLOYEE AND HER WAGES ARE SUBJECT TO UI
--INDIVIDUAL WAS A RECEPTIONIST AND A BOOKKEEPER FOR THE TATTOO AND PIERCING SHOP
-- ALL SERVICES WERE RENDERED AT THE TATTOO SHOP
--INDIVIDUAL WAS NOT ESTABLISHED IN HER OWN TATTOO OR CHURCH BUSINESS
--INDIVIDUAL WAS GIVEN TRAINING ON HOW TO BALANCE BOOKS
--INDIVIDUAL WAS REQUIRED TO WORK SCHEDULED HOURS WAS PAID ON A HOURLY BASIS AT THE BEGINNING AND THEN MOVED TO A COMMISSION PAYMENT THE OWNER OF THE SHOP DETERMINED THE AMOUNT TO BE PAID TO HER
THERE IS AN OTHER INDIVIDUAL THE TATTOO ARTIST WHO IS ALSO SUBJECT AS THEY DO NOT FALL UNDER INDEPENDENT OR CHURCH STATUS
WAGES WERE OBTAINED BASED ON PAYCHECK STUBS PROVIDED BY THE CLAIMANT (IMAGED IN CUBS)

ADDENDUM E

Claims Investigation Worksheet

Type: CLN
GREGORY ALLEN LOWREY

C 5-440433-0
Printed: 11/23/2009
HAF

I HAVE SENT A DETERMINATION LETTER TO THE EMPLOYER.

Source: JACKLYN EMMETT JOHNSON
Title: CLAIMANT

Phone (801) 995-3014

OCT-05-2009 MON 10:43 AM DWS Supportive Services FAX NO. 801 492 4590

DWS 10/05/09 @ 10:58
P. 01DWS-UI
Form 11
REV 04/09State of Utah
DEPARTMENT OF WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE

DATE MAILED: 10/2/09

DWS - UI
OCT 05 2009
MONETARY UNIT

389504-0

Department Use Only

___S___NS

Dept Rep: CO Claims

JACKLYN N EMMETT JOHNSON
640 SPRUCE ST
PLEASANT GROVE UT 84062-3715

STATUS QUESTIONNAIRE FOR WORKERS

A question has been raised regarding services you performed for WHOLE LIFE MINISTRIES, XXX-XX-X283 during 2008, 2009. We have a statutory responsibility to determine if you are an employee covered by unemployment insurance. Please answer the following questions and return this form within 5 days to Utah Department of Workforce Services, CO Claims, PO Box 45277, Salt Lake City, UT, 84145, (801) 526-9530 or Fax (801) 526-9394. Please do not send a cover sheet.

PART I: Information regarding the firm for which you performed these services:

1. Describe in detail the firm's business activity: Church / Tattoo shop
2. Describe in detail the type(s) of work performed by you for this firm: reception
Where was this work performed? 275 E. State St. American Fork UT 84003
When was this work performed? Beginning Date: May 08 Ending Date: Sept. 29 09

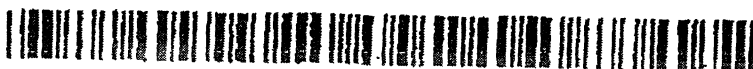
PART II: Information regarding self-employment. Write "N/A" if not applicable.

3. Did you intend to be self-employed in a trade, occupation, or business? N/A Yes ___ No ___
4. If Yes, What is the name of your business? _____
5. Do you have your own place of business? Yes ___ No ___
If yes:
(a) Do you have the right to designate the place the work will be performed? Yes ___ No ___
(b) Do you have business rent, mortgage, utilities or other regular recurring expenses that must be paid? Yes ___ No ___
(c) If you do work from home, do you claim a part of your home as an expense on your individual income tax return? Yes ___ No ___ N/A ___
6. What kind(s) of equipment, tools, materials, and supplies were provided by you?
By the firm? _____
7. Did you provide a business invoice to the firm for your services? Yes ___ No ___
8. Did you regularly perform similar work for others as an independent contractor? Yes ___ No ___
9. Were you required to work exclusively for this firm? Yes ___ No ___
10. Could you realize a profit or risk of a loss from expenses or debts incurred from your decisions? Yes ___ No ___
11. Do you advertise your services? Yes ___ No ___
If Yes, please specify how you advertise: _____

Form 11

Page 1 of 2

DO NOT WRITE BELOW THIS LINE





State of Utah
DEPARTMENT OF COMMERCE
Division of Corporations & Commercial Code
Registration Information Change Form

This form must be type written or
computer generated.

Non-Refundable Processing Fee: \$12.00



RENEWAL

1. Entity File Number: 1503562-0151		Registration Date:	
2. Entity Name: Happy Valley Tattoos & Piercing		Business Purpose: Personal Service	
Registered Agent: Gregory Allen Lowrey		Signature: <i>[Signature]</i>	
Registered Address: Address: 37 South Main Street		City: Pleasant Grove State: UT Zip: 84062	
Principal Office: Address: 37 South Main Street		City: Pleasant Grove State: UT Zip: 84062	

3.	Add <input type="radio"/>	<input type="checkbox"/>	Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Signature (if required): _____
	Change <input type="radio"/>	<input type="checkbox"/>	Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Signature (if required): _____
	Add <input type="radio"/>	<input type="checkbox"/>	Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Signature (if required): _____
	Change <input type="radio"/>	<input type="checkbox"/>	Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Signature (if required): _____
	Add <input type="radio"/>	<input type="checkbox"/>	Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Signature (if required): _____
	Change <input type="radio"/>	<input type="checkbox"/>	Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Signature (if required): _____
	Add <input type="radio"/>	<input type="checkbox"/>	Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Signature (if required): _____
	Change <input type="radio"/>	<input type="checkbox"/>	Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Signature (if required): _____

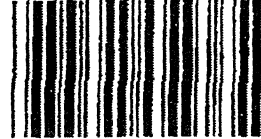
Under penalties of perjury and as an authorized authority, I declare that this statement of change(s), has been examined by me and is, to the best of my knowledge and belief, true, correct and complete.

By *[Signature]* Title *Agent* Date *11-15-2004*
Signature of Authorizing Party



State of Utah
DEPARTMENT OF COMMERCE
Division of Corporations & Commercial Code

Summary of Online Changes



Business Name: HAPPY VALLEY TATTOO AND PIERCING

Entity number: 5003562-0151

Date of Filing: 10/25/2007

Principal Office Address:

Street275 E State
CityAmerican Fork
StateUT
Zip84003

Designated Office Address:

Street275 E State
CityAmerican Fork
StateUT
Zip84003

Registered Agent: Gregory Allen Lowrey

Registered Principals:

New Information (added or updated)

NameWHOLE LIFE MINISTRIES
PositionApplicant
Address275 E State
American Fork, UT 84003

New Information (added or updated)

NameGREGORY ALLEN LOWREY
PositionRegistered Agent
Address275 E State
American Fork, UT 84003

Old Information (removed or updated)

NameWHOLE LIFE MINISTRIES
PositionApplicant

ADDENDUM E

Address 60 W MAIN ST
Lehi, UT 84043

Old Information (removed or updated)

Name GREGORY ALLEN LOWREY
Position Registered Agent
Address 37 S MAIN ST
Pleasant Grove, UT 84062

Gregory Allen Lowrey 10/25/2007

Under GRAMA (63-2-201), all registration information maintained by the Division is classified as public record. For confidentiality purposes, the business entity physical address may be provided rather than the residential or private address of any individual affiliated with the entity.



State of Utah
DEPARTMENT OF COMMERCE
Division of Corporations & Commercial Code

Summary of Online Changes



Business Name HAPPY VALLEY TATTOO AND PIERCING

Entity number 5003562-0151

Date of Filing 02/14/2008

NAICS - Business Purpose

Code 8131
 Description Religious Organizations

PREVIOUS Registered Principals:

Name GREGORY ALLEN LOWREY
 Position Registered Agent
 Address 275 E STATE
 AMERICAN FORK UT 84003

Name WHOLE LIFE MINISTRIES
 Position Applicant
 Address 275 E STATE
 AMERICAN FORK UT 84003

UPDATED Registered Principals:

Name GREGORY ALLEN LOWREY
 Position Registered Agent
 Address 275 E STATE
 AMERICAN FORK UT 84003

Name WHOLE LIFE MINISTRIES
 Position Applicant
 Address 275 E STATE
 AMERICAN FORK UT 84003

02/14/2008

Under GRAMA [63-2-201], all registration information maintained by the Division is classified as public record. For confidentiality purposes, the business entity physical address may be provided rather than the residential or private address of any individual affiliated with the entity.



State of Utah
DEPARTMENT OF COMMERCE
Division of Corporations and Commercial Code

Check Here If:	Fee
<input type="checkbox"/> New Name	\$20.00
<input type="checkbox"/> Amendment	N/A

Business Name Registration / DBA Application

It is your responsibility to check for conflicts with federally registered trademarks. The filing of this application and its approval by the Division of Corporations and Commercial Code does not authorize the use in the State of Utah of an assumed name in violation of the rights of another under federal, state, or common law (U.C.A. Section 42-2-5 et seq.). You may file this paperwork in person or mail or fax to the Division of Corporations (Please file in duplicate). However, if you are faxing you must include the number of a VISA/MasterCard with the date of expiration. Other means of payment are check or cash.

When approved, your business name is registered for 3 years (U.C.A. 42-2-8)!

Do not use this form if this business will need a new state tax registration

If you want a new name, (adding or changing the existing name) a new DBA filing is required.

BUSINESS INFORMATION

1. Requested Business Name: HAPPY VALLEY TATTOO AND PIERCING
2. Purpose of the Business: PERFORMANCE OF TATTOO AND BODY PIERCING AND RELATED SERVICES
3. Business address: 1160 S. STATE #120 OREM UTAH 84097
Street address City State Zip

4. REGISTERED AGENT (Required Information):

4a. Gregory Lowrey 4b. Gregory Lowrey 4c. 801-768-9601
Print the Name Signature of Accepting Agent Daytime Phone Number
4d. 241 N. 200 W. LEHI UTAH 84043
Street Address ONLY City State Zip

INFORMATION ABOUT YOU, THE APPLICANT:

- I. If the applicant/owner is a business, the business entity must be in good standing and incorporated, or be registered or qualified in the state of Utah.
- II. To change applicant/owners, a letter of transfer from the old applicants with their names, addresses and signatures must be attached. The new applicants must complete the following information:

5. APPLICANT/OWNER INFORMATION:

G Check this box if the name of the registered agent listed above is also the applicant/owner. If box is not checked please complete 5a through 6b.

5a. WHOLE LIFE MINISTRIES 5b. Gregory Lowrey - DIRECTOR
Print Person or Business Name Signature and Title of Applicant/Owner
5c. 241 N. 200 W. LEHI UTAH 84043
Address City State Zip
6a. WHOLE LIFE MINISTRIES 6b. Kate Lowrey - DIRECTOR
Print Person or Business Name Signature and Title of Applicant/Owner
6c. 241 N. 200 W. LEHI UTAH 84043
Address City State Zip

IF NEEDED, YOU MAY USE AN ATTACHED SHEET FOR ADDITIONAL APPLICANTS.

Mail In: 160 East 300 South, 2nd Fl, Box 146705
Walk In: 160 East 300 South, Main Floor
Salt Lake City, UT 84114-6705
Service Center: (801)530-4849
Toll Free: (877)526-3994 (Utah Residents)
Fax: (801)530-6111
Web Site: <http://www.commerce.state.ut.us>

Division of Corporations and Commercial Code
I hereby certify that the information provided is true and correct to the best of my knowledge and belief.
Signature of Applicant/Owner: Kate Lowrey
Date: 11/16/01
Examiner: Kathleen Date: 10/20/2001
Applicant Number: 441952
Amount Paid: \$20.00

10-29-01 P02:27 RCVD
5003562

Our friendly, well-trained assistants are available during all of our business hours to help you with your tattoo decisions. We use standardized pricing to give you the fairest price possible. After all is said and done, our prices are usually less than other local shops. You can't beat our high quality work at any price!

We pride ourselves on having a clean studio and follow sterile procedure. For your safety we use only the best disposable needles and other supplies. We only use tried and true inks that hold up to the harsh desert conditions and will give you a tattoo you can be proud of for many years to come. We comply with all Utah County Health Department Regulations, which are the strictest in the United States.

Custom art is our specialty but we can also use your art or one of the thousands of designs we have at the studio. Our artists are trained to work in all tattoo styles including new school, old school, fine line, human and animal portraiture, photo realistic in full color or traditional black & gray. We specialize in fixing or covering-up old tattoos or those that no longer appeal to you.

We want to give you a tattoo you will be proud to wear the rest of your life. Get the tattoo you deserve!

We consider tattooing and piercing to be spiritual services and always strive to offer the highest quality in design, application, courtesy and safety to our patrons. To learn more about the other services and beliefs of UBU Ministries, find the link in the menu to the right.

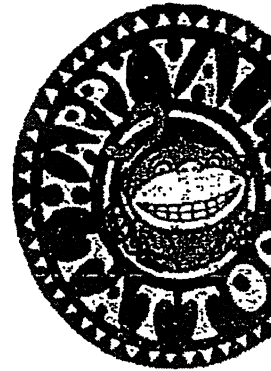
Driving Directions -

American Fork is about 32 Miles South of Salt Lake City and about 12 Miles North of Provo by Lake Utah in Utah Valley, Utah County.
Directions

From Salt Lake City - about 20 - 25 (non-rush hour) minutes from City Center. I-15 South toward Las Vegas. After Point of the Mountain, pass through Lehi; take American Fork exit #276. Exit, turn left on to 500 E. and go down about a mile to State Street, turn left at the light. We are on the right.

LABELS: WELCOME

WELCOME ***



Utah's Favorite Tattoo
Studio

OUR LINKS

Home
About Us & Our Artists
Frequently Asked
Questions
Tattoo Healing
Instructions
The Mormon Tattoo
Controversy
Tattoos & Fake Health
Issues
Apprenticeship Prospects
Happy Valley Tattoo
Massacre
UBU Ministries

Search

powered by Google™

About Us & Our Artists

Thank you for voting us #1 every year since 2002 and Best of Utah 2008!



**Owners - Doc Lowrey & Kita Kazoo -
Master Body Piercer, Tattooist and
Ministers**

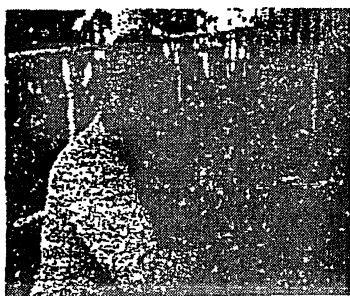
Doc has been tattooing and piercing since 1991. He learned to pierce from Mike Natali - Mr. Bravo, back in the beginning days of piercing.

When it comes to tattooing he is in semi retirement to pursue publishing and performing his original rhythm and blues. His website is a good source of information about his performance schedule & photos of his tattoo & piercing work.

Kita has been tattooing since 1989 and apprenticed under award winning artist Dan Brown of Yuma AZ. She has owned and operated both Royal Oak Tattoo and Happy Valley Tattoo together with her husband of 24 years Doc. She loves to do all types of tattooing, from super realistic to new style. Her portfolio of tattoo photos and art show her high quality workmanship and versatility.

Kita works from a private studio in Ferndale Michigan. She is happy to design artwork for anyone. You can contact her through the link below.

You can see Kita's Tattoo Photos here -
<http://www.myspace.com/kita/kazoo>



**Rev. Steve Bosh - OUR
NEWEST TATTOO ARTIST!**

Steve grew up in Utah and has spent most his adult life traveling around the southwest. He loves his work and cares deeply about his tattoo clients. He truly believes in practicing the golden rule.

OUR SLIDESHOW



HAPPY VALLEY TATTOO IS A SERVICE OF UBU MINISTRIES



More Information - Click
on Logo

THE TAO OF TATTOO

What if ..
Spirituality & Tattoos
Blue Dragon Pink Water
Lilly
Tattoos or Piercings =
Satan?

He has over 10 years of tattoo experience and has recently left his Montana studio to join us at Happy Valley Tattoo. Steve's favorite tattoo style is one of a kind free hand tattoos. He is also loves doing black and gray work. He also has tattoo removal training and is willing to do it.

You can see Steve's Tattoo Photos here -
http://www.myspace.com/ink_stain_tattoos

Happy Valley Tattoo is a service of UBU Ministries a non-denominational church which revolves around one central teaching (the Golden Rule) and does not proselyte tattoo and piercing patrons.

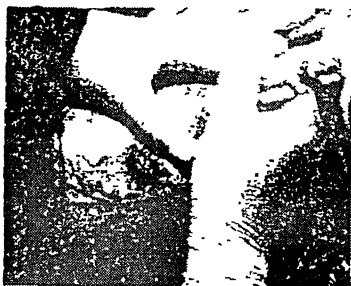
We treat tattoos and piercings as spiritual emblems and their application as a spiritual service.

We are 18 year Members of the National Tattoo Association and Founders of the National Association of Body Art Professionals.

All of our artists are Professionally trained in a single lineage of World Renowned Master Tattoo and Piercing Artists. We are here to serve you with high quality and sincere service.

LABELS: ARTISTS AND TATTOO PHOTOS

Frequently Asked Questions



Hours:

Monday By Appointment
Tuesday through Saturday - 11:AM
to 9:00 PM

Walk-ins:

We welcome walk-in appointments!

However, we recommend that you plan ahead a few days and make an appointment for your tattoo service, especially if you are coming from out

Art on Trial

WANT TO PLAY FOLLOW THE LEADER?



Ads by Google

Manufacturer

Deposit Bags

Tamper-evident
deposit bags state-of-
the-art security
closure
www.nelm3r.com

Study Painting Online

Earn An Accredited MA
at Savannah College
of Art and Design.
www.SCAD.edu/earning

Quality USA Tattoo Kits

First Choice & Product
Packed Fast Shipping
& Top Phone Support
www.mscraft.biz

Tattoo Removal - Reviewed

Latest Tattoo Removal
News. What Works?

of town or need a babysitter.

You must make an appointment in person as it requires a deposit.

If you are coming from a considerable distance we will try to accommodate your travel issues. You will want to make an appointment. Call the studio - 801-756-6642

Don't forget your ID!

No Small Children, No Infants:

Sorry no children are allowed in the studio at any time. If you bring children to the studio you will be asked to remove them immediately. Do not plan on leaving children in the car - get a sitter.

Drugs and Alcohol:

Persons under the influence of drugs or alcohol will be asked to leave the studio. Clients who arrive for service "under the influence" will forfeit their appointment and deposit.

Food and Beverages:

Utah County Law PROHIBITS food and beverages in the "Service Area". Food and beverages are not allowed in the studio.


Identification:

We require official Government Issued, Photo Identification from every client such as, Drivers License, State ID Card, Military ID Card, Passport or Birth Certificate (Birth Certificate must be accompanied by photo ID such as a school ID card)

Minors and Parental Consent:







Utah County does not allow minors to receive tattoo services regardless of parental consent. Body Piercing is allowed for minors with the exception of tongue, nipple and genital piercing (also branding and scarification/cutting) which in Utah County are prohibited for minors regardless of parental consent.

HAPPY VALLEY TATTOO'S FAN BOX


Happy Valley T
Become a Fan

Happy Valley Tattoo Wo
 October 14 at 5:35pm

Happy Valley Tattoo has 13 Fans

		
Lee	Isabel	Gina
		
Kris	Amber	Jeffrey

Donations:

We accept Cash, Credit or Debit Cards. Sorry NO Checks!

Payment is received prior to the service while your paperwork is being completed.

Your ID must match your card - we check every time.

Suggested Donations for Tattoo Services: We price out tattoos by the piece. Our studio rates are \$20./sq. in. for full color or black and gray designs.

There is a \$50 minimum. Hourly prices are reserved for large pieces and vary by artist. You must come into the studio to get a price. We only honor written quotes.

95% of our work is custom art. We do not charge for drawing your art or modifying art you bring to us. Art deposits apply toward the price of the tattoo. (see a fuller explanation of deposit policies below)

Body Piercing Services:

Tattoo artist Steve Bosh is currently performing most body piercings. Contact the studio for more information and pricing.

Deposits:

The Deposit guarantees your appointment with your artist. The Deposit for an appointment is \$50 per client/appointment. The Entire Deposit applies toward your service. Deposits are a guarantee against service. You are guaranteeing you will use the time as agreed and that you will be on time.

Deposits are non-refundable. Failure to keep your appointment or reschedule at least 24 hours prior to your appointment will result in the forfeiture of your deposit.

Deposits may be transferred providing 24 hour notice is given (except for Art Deposits).

Art Deposits:

Art Deposits are taken when the Tattoo Artist is commissioned to draw or re-draw art for the client. The Art Deposit is \$50 and also serves as the deposit for your appointment.

**DO YOU LUV
THE
MONKEY?**

Follow
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Followers (1)



Already a member? Sign in



Thank You

State of Utah
Department of
Workforce Services

Gary R. Herbert
 Governor

Gregory S. Bell
 Lieutenant Governor

KRISTEN COX
 Executive Director

CHRISTOPHER W. LOVE
 Deputy Director

GREGORY B. GARDNER
 Deputy Director

C 5-440433-0

November 23, 2009

Gregory Allen Lowrey
 DBA Happy Valley Tattoo and Piercing
 275 E State Rd
 American Fork UT 84003-2434

Dear Employer:

This letter is in reference to the recent investigation I conducted Happy Valley Tattoo and Piercing for the Utah Department of Workforce Services covering 2008 and 2009 with the claimant Jacklyn N Emmett Johnson SSN 257-81-2283.

Wages for employment are subject to unemployment insurance unless the service is specifically excluded by statute or if the service meets the exclusionary provisions of Section 35A-4-204(e)(i)(ii) of the Utah Employment Security Act. This section states in pertinent part:

- (e) The service is performed by an individual in the employee of a religious, charitable, educational, or other organization, but only if:
 - (i) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C 3306(c) (8), solely by reason of Section 3306(c)(8) of that act; and
 - (ii) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or proceeding calendar year, regardless of whether they were employed at the same moment of time.

IRC Section 501(C)(3). IRC section 501(c)(3) describes charitable organizations, including churches and religious organizations, which qualify for exemption from

federal income tax and generally are eligible to receive tax-deductible contributions. This section provides that:

- an organization must be organized and operated exclusively for religious or other charitable purposes,
- net earnings may not inure to the benefit of any private individual or shareholder,
- no substantial part of its activity may be attempting to influence legislation,
- the organization may not intervene in political campaigns, and
- the organization's purposes and activities may not be illegal or violate fundamental public policy.

Based on information the Department has received there have been more than four or more individuals actively working for the company over a 20 week time period and therefore Happy Valley Tattoo and Piercing no longer meets the church organization exemption and any wages paid are subject to unemployment insurance.

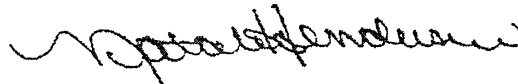
It is my determination that the claimant Jacklyn N Emmett Johnson and any other individuals performing services for 2008 and 2009 are subject to unemployment insurance and wages must be reported to our office as the employer has not shown documentation to show it meets the IRS requirements to be considered a church.

You may file these reports via our website of www.jobs.utah.gov/ui . If you do not have access to the internet or need assistance with the filing of these reports please contact me at the number below.

This decision will become final unless, within fifteen (15) days from the date of mailing, a written appeal is made setting forth the grounds upon which the appeal is made, the relief requested, and the date the appeal is mailed. Mail appeals to: Workforce Services-Field Audit, P.O. Box 45288, Salt Lake City, UT 84145-0288.

Thank you for your cooperation. Please feel free to call or contact me if you should have any questions concerning the unemployment insurance program.

Sincerely,



Natalie Henderson
Field Auditor
801-374-7845

Date Mailed: November 24, 2009

RECEIVED

DEC 14 2009

Dept. of Workforce Services
Unemployment Insurance
FIELD AUDIT

To: Natalie Henderson
Field Auditor
Department of Workforce Services
140 E. 300 S.
Salt Lake City, Utah 84111

Gary R. Herbert – Governor
Gregory S. Bell – Lieutenant Governor
Kristen Cox – Executive Director
Christopher W. Love – Deputy Director
Gregory B. Gardner – Deputy Director

APPEALS ADJUDICATION

DEC 21 2009

U.D.W.S.

From: Reverend Gregory Lowrey – CEO
UBU Ministries
275 E. State Rd.
American Fork, Utah 84003

RE: Your letter C 5-440433-0

Dear Natalie,

I received yesterday Dec 7, 2009 your letter of November 23, postmarked Salt Lake City Dec 2nd, 2009. As you know, I am out of Utah presently and my mail must go through the forwarding process which does add some delay. Since you claim that your decision becomes final 15 days from your mailing, I hope this reaches you in your preferred time frame.

Firstly, your claim that our church is not a church is ludicrous and discriminatory.

If IRS recognition, as you suggest, is your defining marker, you may know that the IRS has never in our 26 year history questioned our status.

I also challenge other allegations you make concerning our church and declare that we have no obligation to your department.

I provided the information you requested concerning our assumed name but you seem intent on attaching ownership of that DBA to me personally when it is clearly owned by UBU Ministries for religious purposes as a simple check with the Utah Corporations Division will plainly reveal.

Since we discussed this at length and I provided the supporting documents for you including the phone number for the Corporations Division for your verification and since you allege findings which are contrary to fact, I can only assume that you have some other motive than an honest performance of your duties in this matter.

-The church has employed a part-time-book-keeper and at-times a-full or part-time personal assistant.

Jackie Johnson did work as a personal assistant until she was fired for failure to perform her duties.

She was employed by the ministry and paid by the ministry to perform services for the ministry.

You are quick to cite your administrative code, but fail to recognize that you are in violation of your own department regulations which you attempt to circumvent by your personal bias with total disregard (but not ignorance, since you cite it) of the law as well as the United States Constitution, Articles I, 14, the Utah State Constitution, Article I

I also consider that you are in violation of the United States Supreme Court ruling in CORPORATION OF PRESIDENT BISHOP v. AMOS, 483 U.S. 327 (1987), 483 U.S. 327, CORPORATION OF THE

PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ET AL. v. AMOS ET AL., APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, No. 86-179, March 31, 1987, Decided June 24, 1987 which clearly defined the limitations placed on government to make determinations about what is and isn't religion or religious practice, which limitations you have already violated.

For your benefit and for brevity, I include this Utah Tax Case excerpt citing this decision.

BEFORE THE STATE TAX COMMISSION OF UTAH, AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION Appeal No. 87-1017:

The Court reversed the district court holding that the district court's efforts to distinguish religious from nonreligious purposes through an examination of the religion's tenets, rituals, and administration, was an improper exercise of governmental power because it was excessive government entanglement in religion. The court reiterated the need for separation between church and state and sought to avoid "the kind of intrusive inquiry into religious belief that the district court engaged in this case." *Amos*, 55 U.S.L.W. at 5009.

Concurring, XXXXX analyzed the potential chilling effect on religion from the government's attempt to determine whether or not an activity carried out by a church is religious or not religious in character. This substantial potential for chilling religious activity makes inappropriate a case-by-case determination of the character of a nonprofit organization, and justifies a categorical exemption for nonprofit activities.

... then while every nonprofit activity may not be operated for religious purposes, the likelihood that many are makes a categorical rule a suitable means to avoid chilling the exercise of religion. *Id.* at 5310 (Brennan J., concurring). Based on Petitioner's nonprofit status in the State of Utah, Petitioner's current tax exempt status with the IRS, and using the guidelines set forth in *Amos*, the Tax Commission hereby finds Petitioner to be a religious institution for the purpose of Utah Code Ann. §59-12-104(8) (1953) and finds that Petitioner qualifies for sales and use tax exemption on sales made to and by Petitioner in the conduct of Petitioner's regular religious functions and activities.

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission hereby reinstates institutional clearance No. XXXXX retroactive to XXXXX. The Auditing Division is hereby ordered to adjust its records in accordance with this decision., DATED this 14 June, 1988., BY ORDER OF THE STATE TAX COMMISSION OF UTAH., R. H. Hansen, Chairman. Roger O. Tew, Commissioner, Joe B. Pacheco, Commissioner, G. Blaine Davis, Commissioner

I hope this excerpt is helpful, though I recommend an entire reading of *CORPORATION OF PRESIDING BISHOP v. AMOS*, 483 U.S. 327 (1987), 483 U.S. 327.

I also consider you in violation of the Religious Freedom Restoration Act of 1993, H.R.1308 and of the Honest services' law, 18 U.S.C. §1346.

"The essence of public corruption is that public officials deprive people in the community of their honest efforts to represent them. That's theft of honest services, and that's what the statute covers." Assistant U.S. Attorney Shane Harrigan.

Honest services' law, 18 U.S.C. §1346, is a brief addendum to the federal mail and wire fraud statute that makes it possible to prosecute public officials for a variety of unethical and criminal activities. This addendum in short reads as a "scheme or artifice to deprive another of the intangible right of honest services."

The 1872 mail fraud statute incorporated the common law concept of fraud, which consists of

depriving someone of property by lying. In the late 1980's, federal prosecutors persuaded lower federal courts to consider that the statute should also include deprivations of the intangible right to honest services. Congress responded by adding a new section to the mail fraud statute declaring that the public had a right to fair and honest representation by public officials. The federal mail fraud statute and honest services clause provides the federal government with jurisdiction to prosecute state and local officials, as well as federal officials. An extremely effective tool to fight public corruption, it is utilized more often than bribery or extortion charges.

In the Seventh Circuit, violating "intangible rights" constitutes a breach of fiduciary duty for personal gain, while most other courts seem to treat every legal duty of a public official as fiduciary. How "honest" must a public official be is a highly contested matter. Despite most citizens demand for honest government officials, we frequently ignore or excuse questionable behaviors by those in positions of power. On the other end of the spectrum, most federal courts of appeals have held in certain circumstances, even a government official's failure to disclose a material conflict of interest can fit within the meaning of the term "honest services", thus is prosecutable."

Since you have no law supporting your unfounded (despite your claim of investigation) allegations I can only suppose that you are attempting to practice religion on religion discrimination against our church and while you are certainly entitled to your own opinions, you do not have the right to give your *personal* preferences the force of law.

Furthermore, if you attempt to hide your bias behind a claim of "investigation", you must be prepared to answer to your overt discrimination since your claim is to have so thoroughly searched the matter out that you could not possibly be mistaken, especially as the Utah Division of Corporations so graciously offered to assist you in establishing ownership of the assumed name that troubles you so (but is none of your business) by phone for which I provided the phone number.

In your "investigation" you obviously could not bother to make a simple phone call to them!

Since you sent your letter to me on letterhead implying the endorsement of the officials named at the top of the letter, I am going to send a copy of this response to them as well.

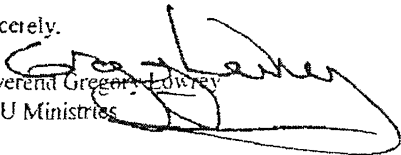
I demand a full and formal apology and withdrawal of your allegations against us.

If my apology and notice of your withdrawal of your claim is not received by 1 January 2010 I will approach the United States Attorney General and the Utah Attorney General and request a religious discrimination investigation.

My Religious Liberties are not yours to toy with or sit in judgment on.

Sincerely,

Reverend Gregory Lowrey
UBU Ministries



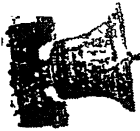
UBU MINISTRIES
275 E. STATE RD.
AMERICAN FORK, UT
84003

RECEIVED

DEC 11, 2009

Dept. of Workforce Services
Unemployment Insurance
FIELD UNIT

12/9/09



WORKFORCE SERVICES FIELD UNIT
PO Box 45288
SLC, UT 84145-0288

12/11/09

11/11/09 11:11 AM

ADDENDUM E

submission of the Registered Principal and Entity documentation]

12 13 [In the face of all these failures of Workforce Services to comprehend the simple and clear meanings of the IRS and the Utah Dept of Commerce, not to mention the Utah and United States Constitutions and the simple declaration by the applicant that she worked for an exempt organization, a church, the question is raised as to whether this action by Workforce Services is an act of religious discrimination where because the religion to which the agents of the state belong does not currently subscribe to some religious practice of UBU Ministries, that they will attack our church by attempting to deny our legal status and Constitutionally protected religious exercise by denying the plain facts of law]

12 14 [I feel bound to point out that as a non-501 c 3 Free Church, UBU Ministries enjoys a 1st amendment recognition in both the United States Constitution and the Utah State Constitution of exemption from government regulation or oversight]

Utah State Constitution **ARTICLE I**

Section 1 [Inherent and inalienable rights] All men have the inherent and inalienable right to enjoy and defend their lives and liberties, to acquire, possess and protect property, to worship according to the dictates of their consciences,

Sec 3 [Utah inseparable from the Union] The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land

Sec 4 [Religious liberty] The rights of conscience shall never be infringed The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof,

The Bill of Rights of the United States of America **Amendment I**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

Amendment XIV **Section 1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,

We have never found our practices to be out of conformance to law and order, and have often submitted to government interest in how we conduct ourselves

In an interest of service to the community and our founding statement of purpose, we support government, though we are not bound by it, IRS and Workforce Services included

ARTICLES OF INCORPORATION OF WHOLE LIFE MINISTRIES

snip .

Article III

The specific purposes, but not limited to, for which the corporation has been formed are:

- (a) To act and operate exclusively as a nonprofit religious corporation, church and mission society pursuant to the laws

of the State of Utah in accordance with the Constitution and the Bill of Rights of the United States of America, to act and operate exclusively as a religious nonprofit corporation exclusively for charitable, religious, educational, social and scientific purposes including for such purposes but not limited to, the making of distributions to organizations that qualify as exempt organizations or to other individuals or organizations according to the provisions of the corporation and to act and operate as an ecclesiastical charitable organization in lessening the burdens of government, providing relief of the poor and distressed or under-privileged, and promoting social welfare by reducing unemployment through economic development.

(b) To engage in any and all activities and pursuits and to support or assist such other organizations as may be reasonably related to the foregoing and following purposes. To solicit and receive contributions, purchase own, lease and sell real and personal property, to make contracts, to invest corporate funds, to spend corporate funds for corporate purposes, and to engage in any activity “in furtherance of, incidental to or connected with any of the other purposes.”
snip...

(i) No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these articles and to establish individual or group stewardship for charitable, administrative, religious, educational, social or scientific purposes and provide for the basic support, transport and housing of certain officers, agents, members or non-members in furtherance of their duties as determined by the corporation including additional incidentals to the services performed and obligations incurred;
snip...

(d) The corporation shall engage in any and all other lawful purposes, activities and pursuits which are substantially similar to the foregoing and which are or may hereafter be authorized by law and exercise any powers that are in furtherance of the purposes of said corporation and asserts the right and intention to participate in any and all activities and exercise any powers allowed to individuals or corporations under the law.

It has always been our intent to keep our practices generally on par with the rest of the community that we serve.

I consider Utah Workforce Services actions in regard to UBU Ministries to be **ILLEGAL, UNCONSTITUTIONAL and OVERTLY DISCRIMINATORY.**]

Reverend Dr. Gregory Lowrey, CEO – UBU Ministries

Employment/Independent SubContractor Agreement # _____ / _____ - _____ / _____

Staff ID # _____ Employed From – To _____

(month/year)

Between:

Whole Life Ministries/Happy Valley Tattoo & Piercing, 275 E. State Rd., American Fork, Utah 84003

and _____,

snip...Personal Contact Information

[Section (a.) is completed by employees. Section (b.) is completed by subcontractors.]

I. Position/Compensation: (Check and complete appropriate designation)

a. ___ Employee:

The position for which I accept employment is _____.

The Hourly Pay for this position will be \$____.____ per hour.

Commission will be paid at a rate of _____%

Weekly hours contracted per this agreement _____.

Hourly and commission earnings will be paid weekly, computed and paid the next business day following the reporting period or according to current schedule.

Employee Signature Here _____ Date _____

b. ___ Artist (Independent Sub-Contractor): (hereafter called “artist”)

Subcontracted services: Sales _____ Tattoo _____ Piercing _____

I am an independent sub-contractor artist and not an employee of Happy Valley Tattoo & Piercing.

I am responsible for recording, reporting and paying my own taxes including SSI.

I have not been promised any employment benefits (e.g. health insurance, workman’s compensation, retirement benefits, unemployment benefits, salary, vacation pay, severance pay or any other services, benefits, payments or obligations typically offered to employees unless otherwise specified in this contract.

As an independent sub-contractor I will represent the name, standards and interests of Happy Valley Tattoo during the term of this agreement and will conduct myself in a professional manner as defined by Happy Valley Tattoo & Piercing.

I will sub-contract at a rate of _____% of all fees collected for my services, to be computed and paid and recorded according to shop policy. The portion of fees for services allotted to Happy Valley Tattoo & Piercing covers my share of rent, utilities, basic phone, use of ultrasonic cleaner, photocopier (approved uses only), autoclave, sterilization bags, business cards, advertising, training, bookkeeping and other such tools and services as may apply.

I will provide all my own personal operating supplies, including but not limited to: work station, artist and client chair, tattoo machines, power supply, needles and bars, needle making equipment, tubes, ink, ink caps, gloves, art and stencil making supplies including paper, pencils, pens, soaps, solutions, alcohol, tape, bandages, piercing tools and all other items incidental to the services performed as per this agreement and will use only supplies and suppliers specifically approved by Happy Valley Tattoo & Piercing to maintain standards of the client service agreement.

Sub-Contractor Signature Here _____ Date _____



Free Shipping with orders over \$100!

Services We Provide

UBU Ministries is a non-denominational church. We offer many services; community activism, political awareness, economic opportunities, healing, counseling, tattoos & piercings. Yes - We believe that giving and receiving tattoos and piercings are spiritual practices.

If you feel you don't quite fit in at other churches, you likely will feel at home here. Come as you are.

Teaching/Tattoos/Piercing

Michigan:

While we are looking for a building, Rev. Doc will be offering scripture study, healing and counseling at the parsonage in Ferndale.

See the meeting schedule [HERE](#).

Tattoo/piercing services are offered at Rev. Kita's private studio here in Ferndale.

Those interested in study or service should email - gregory.lowrey@gmail.com - for details.

Information and our blog can also be found at TAT2ME.COM.

Utah:

Rev. Steve Bosh is at the American Fork church building providing services to the community.

[Find Rev. Steve at Happy Valley Tattoo](#)

Rev Gregory "Doc" Lowrey heals physical and psychological conditions where other traditional doctors fail.

Cancer, seizures, joint injuries, mental problems - all respond to this treatment.

He heals without drugs or surgery

Learn more about Rev. Doc's healing work, visit - [You Can Get Well and Feel Good Again!](#)

UBU Ministries consider tattoos and piercings to be spiritual emblems and their application to be spiritual services.

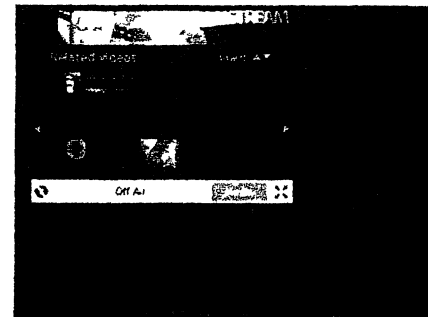
Get a beautiful tattoo or piercing in a calm relaxed atmosphere, where the artist cares about you and your needs.

All of our artists receive personal training from Doc and Kita.

Your design or one of ours, custom art is our specialty.

WEEKLY STUDY GROUP

Sunday 10 pm Eastern Time



[Online video chat by Ustream](#)

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Elizabeth Gilbert
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[Privacy Information](#)

About Us & Our Artists

Thank you for voting us #1 every year since 2002 and Best of Utah 2008!



Rev. Steve Bosh

Steve grew up in Utah and has spent most his adult life traveling around the southwest. He loves his work and cares deeply about his tattoo clients. He truly believes in practicing the golden rule.

He has over 10 years of tattoo experience and has recently left his Montana studio to join us at Happy Valley Tattoo. Steve's favorite tattoo style is one of a kind free hand tattoos. He is also loves doing black and gray work. He also has tattoo removal training and is willing to do it.

You can see Steve's Tattoo Photos here - http://www.myspace.com/ink_stain_tattoos



Management - Doc Lowrey & Kita Kazoo - Master Body Piercer, Tattooist and Ministers

Doc has been tattooing and piercing since 1991. He learned to pierce from Mike Natali - Mr. Bravo, back in the beginning days of piercing. When it comes to tattooing he is in semi retirement to pursue publishing and performing his original rhythm and blues. His website is a good source of information about his performance schedule & photos of his tattoo &

piercing work.

Kita has been tattooing since 1989 and apprenticed under award winning artist Dan Brown of Yuma AZ. She has owned and operated both Royal Oak Tattoo and Happy Valley Tattoo together with her husband of 24 years Doc. She loves to do all types of tattooing, from super realistic to new style. Her portfolio of tattoo photos and art show her high quality workmanship and versatility.

Kita works from a private studio in Ferndale Michigan. She is happy to design artwork for anyone. You can contact her through the link below.

You can see Kita's Tattoo Photos here - <http://www.myspace.com/kitakazoo>

Happy Valley Tattoo is a service of **UBU Ministries** a non-denominational church which revolves around one central teaching (the Golden Rule).

We treat tattoos and piercings as spiritual emblems and their application as a spiritual service.

We will discuss spiritual issues at the clients request, but we do not preach at clients or try to convert you to our way of thinking. We perform the service you request and we respect your spiritual individuality.

EVJHJIT

5d

UTAH'S FAVORITE!



A Service of UBU Ministries

Search

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TAT2ME.COM

Tattoo Signs of
Normal Healing
Tattoo Symptoms of
Bad Healing
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Tattoo Aftercare
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from Family & Friends
Tattoo Aftercare
Mistake - Toxins or
Bacteria

INTERESTING LINKS

Happy Valley Tattoo
Massacre
UBU Ministries

FREE DESIGNS!

CLICK HERE



**TATTOO
DESIGNS
ONLINE**

TATTOODLES
designs are at no
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you get your

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Happy Valley
Tattoo & Piercing!

Premium Paper Rolls
Here
High Quality Cash
Register Rolls Buy
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Local Tattoo Shops
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4743-T
J9/09

DEPARTMENT OF WORKFORCE SERVICES
APPEALS UNIT

Box 45244, Salt Lake City, Utah 84145-0244
(801) 526-9300 (877) 800-0671 (801) 526-9242 (fax)

NOTICE OF UNEMPLOYMENT APPEAL TELEPHONE HEARING

APPELLANT

PERSONNEL DEPARTMENT
GREGORY ALLEN LOWREY
275 E STATE RD
AMERICAN FORK UT 84003-2434

RESPONDENT

JACKLYN N EMMETT JOHNSON
640 SPRUCE ST
PLEASANT GROVE UT 84062-3715

The employer has filed an appeal from a Department decision. A formal TELEPHONE hearing will be conducted regarding the issues listed on this notice under the legal authority and jurisdiction of Section 35A-4-406 of the Utah Employment Security Act.

SOCIAL SECURITY NO: XXX-XX-2283 CASE NO: 09-A-19944-T
DATE OF HEARING: Wednesday, March 03, 2010
TIME OF HEARING: 03:00 PM (Mountain Time)

READ CAREFULLY! YOU MUST FOLLOW THE INSTRUCTIONS BELOW

Call 801-526-9300 or 1-877-800-0671 immediately to indicate whether you are going to participate in the hearing and to provide a telephone number where you may be reached for the telephone hearing. **If you filed the appeal, or missed a hearing and are now requesting a new hearing, your case will be scheduled for the time and date listed above, provided you call at least 24 hours prior to the hearing time to confirm your participation. If your case is scheduled for Monday or a day after a holiday, you must provide your telephone number before 4:00p.m. (Mountain Time) of the business day preceding the weekend or the holiday.**

Failure to call as instructed prior to the tentatively scheduled hearing time will result in cancellation of your appeal request and the hearing time will be assigned to another case. If your case is dismissed for failing to provide your telephone number as instructed prior to the hearing time and you desire a hearing, you must submit a written request for a hearing.

* Our business hours are: Monday through Thursday, 7:00 a.m. through 6:00 p.m. We are not open for business on State or Federal holidays.

* The judge will NOT call you if you fail to provide a number as instructed above even if you have provided a telephone number to the Department before receiving this notice.

* The appeal decision will be based solely on the evidence presented at the hearing. Failure to participate in the hearing may result in a decision against you. If the employer does not participate in the hearing, the appeal may be dismissed.

IF YOU MISS THE HEARING (REQUESTING A REOPENING): You must immediately write to request a reopening of the hearing explaining why you failed to appear. Failure to request a reopening within 10 calendar days of the decision date may cause you to lose your right to reopen the hearing.

RESCHEDULING: To ensure a prompt hearing, rescheduling requests are rarely granted. The simple convenience of a party is not a reason to reschedule. Speak to the judge IMMEDIATELY if you are unable to participate at the scheduled hearing time. You must tell the judge why you need to reschedule.

THE ISSUES TO BE HEARD DURING THE HEARING ARE: (Section references are to the Utah Employment Security Act,

ADDENDUM E

Utah Code Annotated 1953, and the Utah Administrative Code.)

5A-4-204(1) Whether the worker performed a service for a wage under any contract of hire, whether written or oral, express or implied, including service in interstate commerce and service as an officer of a corporation, which would constitute employment".

5A-4-204(3): Whether the individual is an independent contractor, i.e. is independently established and is performing services which are free from control or direction with regard to the performance of those services

5A-4-208. Whether the worker received remuneration for a personal service, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, which constitutes a wage. (Gratuities received in the course of the employment are treated as wages)

5A-4-204(2)(e). Whether the worker was employed by a religious, charitable, educational or other organization which had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time

99A-508: Whether the appellant filed a timely appeal; whether the appellant had good cause for failure to file an appeal within 15 days from the date of the determination

SPECIAL INSTRUCTIONS:

READ THE APPEALS BROCHURE. YOU WILL BE RESPONSIBLE FOR THE INFORMATION IN THE BROCHURE. Additional information regarding unemployment insurance appeals may be found online at: <http://www.jobs.utah.gov/appeals/> If you have any questions about the above information, please call 801-526-9300 or 1-800-800-0671. ***

ABOUT THE HEARING: The hearing is your opportunity to present ALL testimony and evidence on the issues. In the event of a further appeal, testimony and evidence that could have been presented at the original hearing may not be allowed. A written decision will be mailed to you after the hearing.

PERSON HEARING: If you wish to appear in-person for the hearing, please call the Appeals Unit as soon as possible to discuss the request with the judge.

INTERPRETER: If you need an interpreter for the hearing call the Appeals Unit IMMEDIATELY and we will provide an interpreter for you.

RIGHT TO REPRESENTATION: You may have an attorney or other representative represent you in the hearing. You are responsible to pay any fees required by the attorney or representative. Provide the name and telephone number of your attorney or representative when you provide your telephone number for the hearing.

RIGHT TO PROVIDE A RESPONSE: You may make a written response to the appeal, but you are not required to do so. A written response will not relieve you of the responsibility of participating in the hearing. If you choose to write a response, you must send a copy of the response to the Appeals Office and all other parties on this notice. The response must be received BEFORE the hearing. The Appeals Office will not forward your written response to the other parties.

DOCUMENTS: Enclosed are documents that may be made part of the hearing record. Read these documents BEFORE the hearing. All parties should have all the documents with them at the time of the hearing. Employer Representatives: Ensure the employer receives a copy of the Notice of Hearing and all documents.

If you have additional documents to be considered by the judge, you **MUST** mail, fax or hand-deliver the documents to the Appeals Office and **all other parties at least three days before** the hearing. The judge will not forward your documents to the other parties.

DEPARTMENT OF WORKFORCE SERVICES
APPEALS UNIT

ADDENDUM 1

Box 45244, Salt Lake City, Utah 84145-0244
(801) 526-9300 (877) 800-0671 (801) 526-9242 (fax)

Parties Include the date and time of the hearing, case number, and the name of the judge.

Documents not provided in a timely manner may not be considered by the judge.

WITNESSES: If you wish to have someone testify, you must arrange for that person to be available at the time of the hearing. The best witness has firsthand knowledge of what he or she is testifying about. Make sure to give the name and telephone number of the witness(es) to the Appeals Unit before the hearing. Arrange for your witness(es) to participate from a separate extension phone, a speaker phone, or another telephone line so that the participants in the hearing can hear all of the testimony. Essential witnesses who refuse to testify may be subpoenaed. For additional details, see the Appeals of Unemployment Decisions pamphlet.

DURING THE HEARING: The judge may not allow you to appear in the hearing if you are late.

Make sure that you can give the hearing your full attention. If you cannot hear or if you do not understand what is going on during the hearing, let the judge know immediately. If at any time the telephone connection with the judge is lost, hang up the telephone and immediately call 801-526-9300 or 1-877-800-0671.

CLAIMANT: If you are still unemployed continue to file your weekly claims throughout the appeals process and answer the questions accurately. Failure to do so may result in the denial of benefits even if the decision under appeal is reversed. If you need assistance with filing, contact the Utah Claims Center at 801-526-4400 or 1-888-848-0688.

IF YOU HAVE ANY QUESTIONS PERTAINING TO THE HEARING, CALL THE APPEALS UNIT AT 801-526-9300 or 877-800-0671.

Send all documents or written requests to: Department of Workforce Services
Appeals Unit
Box 45244
Salt Lake City, UT 84145-0244
Fax Number: (801) 526-9242

Date Issued: January 26, 2010

Mailed By: PB

PROCEEDINGS

BY THE ADMINISTRATIVE LAW JUDGE: This hearing is for the appellant, Reverend Gregory Allen Lowrey, regarding the unemployment of Jacklyn Emmett Johnson. Case Number is 09-A-19944-T. My name is Judge Rubalcava. This hearing is being conducted over the telephone today, March 3rd, 2010. The time is currently 3:05 p.m. This hearing is being recorded as required by law and all testimony will be taken under oath. This hearing is for both parties to present all available testimony, and evidence, with regard to the case.

If either party chooses to appeal the decision there will not be another hearing on this matter. Testimony, and evidence presented today will become the case record and reviewed in the event of a further appeal. For this reason it is important to present all testimony and evidence at this hearing. Do you understand, Reverend Lowrey?

LOWREY Yes.

JUDGE Ms. Henderson?

HENDERSON Yes.

JUDGE Participating in this hearing representing the appellant is Reverend Gregory Lowrey. Can you please spell your name?

LOWREY G-R-E-G-O-R-Y. L-O-W-R-E-Y.

JUDGE I have on your witness list Steve Bosch, and Katrina Lowrey. Are they still going to participate today?

LOWREY Yes.

JUDGE And are they with you now or am I going to need to call them at another number?

LOWREY I need to (inaudible) to call them.

JUDGE Okay, we'll give them a call later when we're ready to have them testify.

LOWREY Okay.

JUDGE Is there anybody else you wish to add to your witness list at this time?

LOWREY No.

JUDGE And is there anybody else on your line now listening to this phone call?

LOWREY No.

JUDGE Let me look at her responses on – starting with Exhibit 3. We're going to follow that criteria to – in my asking questions today.

Now in – on this questionnaire she's – it's actually directed to Whole Life Ministries. Who did she actually perform services for, was it for the church, or for the tattoo shop?

LOWREY There – there's no difference. The – she performed the services – she was an employee. And I don't have any – I don't have any question about, you know – or dispute about whether or not she was an employee. It's just that she – the question is who she was an employee of. And so she was an employee of the church, of Whole Life Ministries. And last year we changed our name to – from Whole Life Ministries to UBU Ministries. But–

JUDGE What does UBU stand for?

LOWREY It stands for – it's UBU, uncle bob uncle, and it stands for UBU.

JUDGE Uncle bob uncle?

LOWREY What I spelled it stands for, those are just the initials.

JUDGE Okay.

LOWREY U – UBU. And it stands for the - for the person being who they were created to be. To be – to be your true self.

JUDGE Okay, well –

LOWREY As opposed – as opposed to being –

JUDGE That's fine.

LOWREY - someone else.

JUDGE I'm sure it means something but I don't want to delve into –

LOWREY Well it's part of our – it's part of our mission of – of our church. (Unintelligible) –

JUDGE That's fine. I just don't want to delve into the religious aspects.

LOWREY Okay.

JUDGE Your religion in this hearing. But I was expecting it to make some sense from face value, but we'll just leave it at that.

1 Well if you don't have any objection as to whether or not she was – well essentially we
2 typically analyze the – the relationship these individuals have with the company they
3 worked for. But if you don't have any objection to – to stating whether – to saying that
4 she was not an independent contractor then we'll focus on the other issue of who she
5 actually worked for.

6
7 LOWREY Well we had – we had – in an effort to keep her there we had made an effort to establish
her as an independent contractor. And we had started – she started taking her pay as an
independent contractor, but we had never filled out any contract for her. We just never
got to it. And that was kind of a – a late change, as we were getting ready to move to
Michigan. So it just didn't get taken care of. But in the time previous to that she was an
employee. There was no – there's no dispute about whether she was an employee.

JUDGE Okay. Well if –

LOWREY In my own mind is that if - she was considered an employee all the way through to the
time she was fired.

JUDGE All right. Well if you're going to concede that point there's no sense in dwelling on that
particular issue. Just for future reference, the way the State of Utah looks at that type of
an issue is generally independent con – contractor agreements is – or independent
contractor status, as far as the State of Utah looks at it, is a decision that the worker
makes solely on their own.

LOWREY Yeah.

JUDGE It's not – the – the employing party does not make the decision to move their worker to
that status. The State of Utah only classifies workers in two categories. Independent
contractor, meaning they're independently established in their own business, and a
decision they made on their own to do so. or they're an employee.

LOWREY Yeah. She was being offered an opportunity to take on a completely different
responsibility and enter into a – a whole different relationship with the church as an
independent contractor than she had been as a receptionist, or assistant.

JUDGE Well if you don't have any objection –

LOWREY So she would have been terminated from the one position and then she would have been
able to take the other one. And that's –

JUDGE But you're saying she never made it to that point?

LOWREY Well she – she wanted to do that. It was her decision to do it. But we never – we never
got the contract actually filled out. So – so, you know, I – I don't want to press the issue

would you need that name for the business? I mean why –

LOWREY Maybe we didn't – maybe we didn't need it. We (unintelligible) –

JUDGE I'm just wondering why you couldn't operate under the - the name of your – your relig
(sic) – of your church –

LOWREY Well we do – well we do. We do. We do. And – and the – the church building has the –
has the name of the church prominent on the building, and our literature has the name of
the church. It's prominent on all our – all of our paperwork, and other literature that we
use. And on our web site as well. It's all – it's all made – I – I think it's made abundantly
clear that – that this is a – that Happy Valley Tattoo & Piercing is the spiritual service of
the church. If we – if we want to go to Exhibit – well 11, 12, and 13 it – it should be
pretty clear there. On 11, at paragraph 5. "We consider tattooing, and piercing to be
spiritual services." On Exhibit 12, it refers to us as ministers. Our new artist is Rev.
Bosch. In the column on the right it clearly states Happy Valley Tattoo is a service of
UBU Ministries.

JUDGE What other services did Ms. Johnson provide?

LOWREY She – well she was the personal assistant to – to me, and she provided services at the
reception area primarily, but not exclusively. She kind of was there to do whatever I
needed to be done. And a lot of the day that was – that was the primary thing for her to
do, was to perform reception duties.

JUDGE For you –

LOWREY But – but other people – everyone there performed the same duties. She wasn't, you
know –

JUDGE We're going to focus on her today. So these –

LOWREY All right.

JUDGE - duties were performed directly for you?

LOWREY Yes.

JUDGE So what sort of responsibilities did she have then?

LOWREY She would greet people when they came in, she would answer the phone, she'd answer
questions for people. If – if – if one of the artists, or ministers, wasn't there available to
talk to somebody she would refer – she would refer people that came in to – to someone
else. But if they weren't available she could help them a little bit, you know up to a limit.

And then at a certain point she had to turn them over to – to – to one of the artists that was there.

She kept the daily log, and a calendar. And then she performed other tasks for – well not for every body else but just for me. She did – did some sorting jewelry, shredding paper, cleaning, you know. She was responsible for cleaning the – the building. That was pretty much about it.

JUDGE Now these services that she performed, were they primarily for the tattoo artistry?

LOWREY Well she – well there – the – there's no – the – the same space, the same physical space, is used for all of the church services. That's – that's our – it's our church building. And there's an area that was – was split up into areas for artists to use. But the – all – but aside from the – the space that they – that they lease the – the rest of the space is – is all space used by the church for all of its services.

So – so we had people who would sit in the – in the front area of the building that would be waiting to talk to an artist perhaps, or they might be there where – where we – we held our – we held our regular church meetings there, too. And we – we performed other services, counseling, or healing services, in the – in the what's kind of considered the studio part of the – of the – of the church, except that the – the – the offices there were our offices. So in my office I – I did all of those things, you know. I did healing, and counseling, and – and other (unintelligible) –

JUDGE (Inaudible) –

LOWREY Sorry?

JUDGE Who paid Ms. Johnson's wage? Who was – who was the – the signatory on the check? I mean who – who would it have come from?

LOWREY The check came from UBU Ministries.

JUDGE It said UBU Ministries on her checks?

LOWREY Yes.

JUDGE How did you find Ms. Johnson?

LOWREY You know I don't – she – I think that – that – I was in Michigan when she started her employment there. So she – she started – I think she responded to a – a ad that we had placed.

JUDGE What sort of an ad?

LOWREY I think it was an ad on MySpace. on the internet.

JUDGE What was the ad (inaudible)?

LOWREY For a receptionist.

JUDGE Did the ad say what type of services she would be performing?

LOWREY No. Aside from receptionist.

JUDGE Did it say who the receptionist duties would be for?

LOWREY No.

JUDGE To be considered under the religious provisions, as set forth by the IRS, you need a 501C-3. Do you have such a document?

LOWREY Well no we don't. because the churches are automatically exempt and aren't required to obtain 501C-3.

JUDGE And do you have proof that that's the case?

LOWREY Yeah. I have in the -- here -- I have the exhibits here that show the IRS code for that. Let's see. Probably 30 (sic) -- 33 it looks like, starting with 33. And (unintelligible) -

JUDGE On (inaudible) title it says churches and religious organizations may not apply for IRS exemption recognition. Where does it actually say -

LOWREY Well

JUDGE What is the actual IRS publication that says that a church doesn't need -

LOWREY Well it's right there under that heading. It's IRS Publication 1828. And this -- this whole page is take -- is taken directly from that publication. This is not my -

JUDGE Well (inaudible) -

LOWREY - explanation.

JUDGE - that fits your explanation. It says page C-2. Congress has enacted special tax laws applicable to churches, religious organizations, and ministries in recognition of the unique status in American society under their rights guaranteed by the first amendment of the Constitution of the United States. Churches, and religious organizations are generally exempt from income tax, and receive other favorable treatment under the tax law.

JUDGE Well let's go back –

LOWREY - is the – the 501C-3 requirements. And they say that if we elect not to apply we're not subject to that test. That's part of 501C-3. That – that statement is part of the 501C-3 requirements. It's all from the same publication, that's Publication 1828.

And then there's a description from publication – IRS Publication 557, which is the application for recognition of exemption. This is what they wanted us to apply for is the recognition of exemption. And then in the 1828 they say we don't have to apply for it unless we – if we don't want to. And so –

JUDGE Essentially your argument is that unless you are audited by the IRS then you don't have to – you can be considered a religious organization and therefore exempt from any –

LOWREY Yes. And they say right in the middle of that Exhibit 34, some organizations are not required to file Form 1023. And if we skip down to the next part, organizations that are not required, include churches, inner church organizations, et cetera, but don't have to file 1023, which is the recognition of exemption, because we're automatically exempt.

And then it gives the organizational tests, which they refer to at the bottom of Exhibit 33, that – that they're given benefit of the doubt as described by the organizational test. So here's the organizational test at the bottom of Exhibit 34. It says, "In order to determine whether an organization meets the religious purposes test the IRS maintains two guidelines. One, that the particular religious beliefs of the organization are truly and sincerely held. And, two, that the practices and rituals of – are not illegal, or contrary to clearly defined public policy.

And then at the top of Exhibit 35 they continue – and this is from the same IRS publication. If there is a clear showing that the beliefs, or doctrines, are sincerely held by those professing them the IRS will not question the religious nature of those beliefs.

JUDGE Well if that's the case I don't understand why any company doesn't call themselves a church, or a religious organization.

LOWREY Well that – you know, I – I suppose that any company could, but that's – you know, that's the whole – that's a different issue I think, than where we're at. We – we are a church. We are a religious organization. We incorporated as a – as a religious corporation. Our DBA, Happy Valley Tattoo, shows on the registered principal search to be a religious organization for – for religious purposes. And so, you know, we – so I can't – I can't answer to your – your question about other businesses, I mean what they do or don't do.

My question in that regard is why any church does register as 501C-3 when they're not obligated to. And before 1965 it didn't – it didn't even exist. Because when they – when they file as a 501C-3 they give the government a degree of control over how they conduct

their – their church. And in order to maintain the status of a free church they – you know a non-state church, they need to – they need to not – they need to – to not file as 501C-3. And that's why I believe the IRS makes it very clear that churches are not required to file for recognition, and that churches are automatically exempt.

Now they go in that same document, that 1828, the IRS Publication 1828, where after they say that churches are not required to obtain 501C-3 status they – they suggest that churches might find it beneficial to obtain that status because it helps them get grants from other organizations. and things. And that – that – that that, you know, makes other corporations feel comfortable about making donations to that (phonetic). So I didn't feel that since we – we elected not to make ourselves a state regulated church, and stay a free church, that – that we would not file the 501C-3, nor would we attempt to obtain recognition for that.

JUDGE All right.

LOWREY And that's what they're saying right here, is that – that they don't question that if it's – if it's – if those are sincerely held they have no question about it. Now we did have an IRS (unintelligible) –

JUDGE Are your – I'm sorry, what were you just going to say?

LOWREY I said we did have an IRS audit in 2005. We were audited by the IRS. And I included the name, and phone number, and address of the IRS agent. And I was trying to get her to be one of my witnesses but I couldn't ever – never get a hold of her.

JUDGE Well did you (unintelligible) –

LOWREY And I kind of doubt if she would have agreed anyway.

JUDGE They not give you their decision from their audit?

LOWREY I don't – you know (unintelligible) –

JUDGE (Inaudible) you're audited you're given a conclusion.

LOWREY It was in 2005, and our – our – the – the ministry's treasurer, which isn't me, would have had that paperwork. All of – all of which now is in boxes in a storage unit in Utah, so I couldn't – I couldn't – there – there's nobody that could even get to those. But the IRS has records of that, and – and they – and I included the name of the agent. And I know that she wouldn't have any problem –

JUDGE What was the conclusion of the audit?

LOWREY - (inaudible) that. Pardon?

JUDGE What was the conclusion of the audit?

LOWREY The conclusion of the audit? Well was that – well we'd had – we had had – we – we'd had a problem where we didn't have enough money to pay our payroll –

JUDGE Well let's (unintelligible) –

LOWREY - and pay our employment tax. And so we –

JUDGE All right, hold on –

LOWREY - decided –

JUDGE Hold on – hold on. Mr. Lowrey. Did they come to the conclusion that your (unintelligible) –

LOWREY That we were a church? Yes.

JUDGE All right, I didn't hear your response because you answered while I was talking.

LOWREY Oh. Yes. They came to the conclusion that we were a church. They – they never had a question about that.

JUDGE All right, well your position on this matter is fairly clear to me, so we're going to move on. Are there any other new facts, or evidence, you would like to add pertaining to this issue?

LOWREY Well the – I – I think that in Exhibit 35 it goes on to describe that religious organizations are exempt from federal unemployment tax, at the bottom of the page. And that – and at the top of the page that – that we are – well no, someplace else. Oh, it's still at the bottom of the page. There's a service – payments for services performed by an employee of a religious charitable, education, or other organization. that are – are not subject to – to the – to the taxes. And they don't – and – and I didn't know until now that they're not – that we don't – they're not subject to the FICA (phonetic) either. I didn't know that. And they have a – they have a form that you can send in, 8274 in that last paragraph on Exhibit 35, which I'm going to go ahead and do because we do have a relig (sic) – we are opposed on religious grounds to being tax agents for the government. So we're going to go ahead and do that. too, where we don't withhold their –

JUDGE (Inaudible) FICA taxes? Have you been paying FICA taxes?

LOWREY On employee – on employees, yeah. On – on the – for – for Jackie Johnson we did, sure.

We treated her as an employee, and we – and we withheld her – her income tax, and paid her FICA tax – or FICA tax. But we had already had a determination several years ago from Workforce Services because we had been paying into the unemployment fund. And – and they determined that we – that we weren't supposed to be paying into and refunded monies that we had paid –

JUDGE When was that?

LOWREY You know I don't remember exactly when that is, but I would think that Natalie would have a record of that. It – it was with Whole Life Ministries, and it was – it was while we were in Pleasant Grove, so it would have been – it was – that was when we were in (unintelligible)? So that would have been six years – six years ago maybe, or – but they had already decided that so we hadn't been paying – we – we had been paying into it. They decided that we weren't supposed to be paying into it. They refunded our money, and we – we quit paying into it. And they – and they examined this back then. So, you know, I don't know why that that examination of – of our church isn't any good today, but I think it should be.

But any rate, this Exhibit 35 describes that we're not obligated to – to pay federal unemployment tax. Or we're exempt from paying it, not – it's not obligated. We're exempt from it.

JUDGE All right, thank you, Mr. Lowrey. At this time, Ms. Henderson, do you have any questions for Mr. Lowrey?

HENDERSON I do. I just need a clarification on this IRS audit. Was it UBU Ministries that was actually audited, or –

LOWREY No, it was Whole Life Ministries.

HENDERSON Whole Life Ministries?

LOWREY Yeah.

HENDERSON I don't have Happy Valley Tattoo listed under – anywhere for Whole Life Ministries, only UBU.

LOWREY Well I – I think that I disagree with you on that, because your own – your – the exhibit that you submitted yourself here – let me find it. This would be in the early sections. Exhibit Number 9, is the – is the application for a DBA. And – and it shows there that – it shows me as the registered agent.

HENDERSON Right. But it shows (unintelligible) –

JUDGE Who were the checks made out by?

HENDERSON UBU Ministries.

JUDGE According to Mr. Lowrey because he considers his – the entity to be a – a church, or a religious organization, he's exempt from having to pay any taxes. What do you have to say about that?

HENDERSON I say that there was not enough documentation to support that Happy Valley Tattoo was in fact a religious organization.

JUDGE Well what information would he need to provide to show that he is?

HENDERSON Well there's – he did not have any information as to what the – you know when they held their church services, or whether the services were strictly the tattoo. There was indeed a right to realize a profit and loss, and as a church organization it may fall under the non-profit. So I needed additional specification on whether, you know, Happy Valley Tattoo was in fact, you know –

JUDGE (Inaudible) presume to make that evaluation?

HENDERSON Yes. It was not – it was not available to me, as far as profit or loss, for Happy Valley Tattoo.

JUDGE I want to know what criteria you used to make that evaluation.

HENDERSON I'm sorry, I don't understand the question.

JUDGE It sounds like you're using some sort of a checklist to determine whether or not his – the entity was a religious organization or not. I'm just wondering what information you used to make that evaluation. Were you following some section of the Unemployment Security Act?

HENDERSON No, actually I was using the IRS Code. That's how the IRS defines what a religious organization is.

JUDGE (Inaudible) that section of the IRS Code?

HENDERSON We're looking at – just a minute. We – were actually just looking at it, just let me find it really quick. Exhibit 33 And it has here that net earnings may not inure (phonetic) the benefit of any private individual, or shareholder. If there was a profit from Happy Valley Tattoo then that was directly affecting the shareholders in UBU Ministries.

JUDGE Mr. Lowrey's argument was that as a church, or religious organization, he could choose

not to report that to the IRS, and therefore didn't.

HENDERSON Well he does not have to report that to the IRS but he still should be performing, and you know, still should be coming up with income statements, profit and loss statements. That could have been provided at the initial time of the investigation.

JUDGE Well would that have proved that he was a religious organization?

HENDERSON It would not. It would not have made – if there was profit or loss then it would have showed that he does not fall under the criteria for a church organization under the IRS Code. And if there was no profit or loss then, you know, it would have – you know it would have helped his case.

JUDGE Well his argument was, if you look at the bottom of Exhibit 33 where it says entities which elect not to apply essentially to be examined by this criteria, or just above it, are not subject to the test unless they come under an IRS audit. Essentially he's saying he's not subject to those criteria as far as net earnings that inure from the benefit of private individual, or shareholder, et cetera, et cetera, because essentially the I – a previous IRS audit didn't determine that he was not a religious organization.

HENDERSON Okay, but if there was another IRS audit he would need to provide this information. So he should be keeping records of this information in case another audit comes up. In this particular case a question has – you know has come up regarding state unemployment tax. He needs to be keeping a record of that to provide documentation whether there is profit or loss so that we can make a determination whether he met that requirement or not. And the IRS audit does not deal with any profit or loss that came in from Happy Valley Tattoo.

JUDGE ~~Did you request the IRS audit from him?~~

HENDERSON Not at the time. He told me that he – I did not know that there was an IRS audit.

JUDGE He also made a point that the Department of Workforce Services had previously determined about six years ago that – that the church was – his church was exempt and refunded any benefits he already contributed to the fund.

HENDERSON I found no such determination. I reviewed our documents, I went over to our status department 'cause they would have been the one to issue that determination and they did not have one on file.

JUDGE (Inaudible) provide you any documentation to prove that – that portion of his argument?

HENDERSON Pardon me?

HENDERSON The Department of Commerce (inaudible) provide proof that it is an actual church organization. You have there listed that it's a chur (sic) – church organization but there's no document to support the fact that it was a church organization.

LOWREY Well the registered principal church shows that it's a religious organization.

JUDGE Well I'm not going to put a lot of weight on that. When you fill out the application you just check religious organization and they just put it on there. They don't do any verification to find out if it is a legitimate church organization or not.

LOWREY Yeah. But I – I guess that's the only question I had, since you asked her about it. If I had provided any of that information. She didn't ask for any of that information.

JUDGE Well if she's –

LOWREY (Unintelligible) –

JUDGE - conducting an investigation for the purpose of determining whether or not these people should be exempt or not you think could be your first inclination to cite that there was a prior determination by the Department which exempted your company.

LOWREY Well until I – until I got the – the letter, the determination, I didn't have the codes that they were citing that explained that.

JUDGE Even once you received the determination letter from her why didn't you go locate that determination from the Department?

LOWREY Well I didn't – I don't know.

JUDGE All right.

LOWREY I don't know. And – and I – and I don't know the – I mean I'm sure that that could be obtained still. I – I know that there's a record of it, you know. She – I don't know why she didn't find it but it happened so there must be a record of it.

JUDGE Well we can only got with what we've got today. Do you have any more questions for her?

LOWREY No.

JUDGE Let me just make one point clear that I'm a little confused about still. Whole Life Ministries, UBU Ministries, it's the same entity; is that correct?

LOWREY Yeah. When we decided to open a church in Michigan there was already a church that

had the name Whole Life Ministries in Michigan. And so we decided just to change the – to change the name completely. And that was a year ago.

JUDGE So it's just simply a name change.

LOWREY It's just simply a name change, didn't change anything else.

JUDGE That was one year ago?

LOWREY Yes, approximately.

JUDGE All right, at this time we're going to give Ms. Johnson a call, ask her a few questions. I'll – I'm going to let both parties question her as well after I'm done. I'm going to put you both on hold for just a moment while I dial her number.

LOWREY All right.

WHEREUPON, a short break was had in the proceeding.)

JUDGE Are you still there, Ms. Henderson?

HENDERSON Yes.

JUDGE Mr. Lowrey?

LOWREY Yes.

JUDGE And Ms. Johnson?

JOHNSON Yes.

OATH ADMINISTERED. Ms. Johnson answered in the affirmative.

JUDGE Now I've previously questioned Mr. Lowrey. He's already conceded that you were employed by the chur (sic) – by his church. The question is essentially whether or not his church is exempt from unemployment tax. I just have a few questions from you to help me in my determination on that particular issue.

JOHNSON Okay.

JUDGE He indicated that he believed you started work for him in response to an ad - I'm not sure if that was an ad in the paper or what. Can you tell me how you located his – Whole Life Ministries?

JOHNSON There was actually a MySpace ad and I saw it on people's comments that Happy Valley Tattoo was looking for a receptionist. So I went in and inquired about it.

JUDGE And did it say Happy Valley Tattoo?

JOHNSON Yes, it did.

JUDGE Did the ad say that it was affiliated with a religious organization?

JOHNSON No, it didn't.

JUDGE Did it say that it was affiliated with Whole Life Ministries?

JOHNSON Nope.

JUDGE When did you learn that the Happy Valley Tattoo was affiliated with Mr. Lowrey's church?

JOHNSON Not until about a few months after I had been working there, because I didn't even meet Mr. Lowrey until a few months after my employment there.

JUDGE How did you discover that Happy Valley Tattoo was affiliated with the church?

JOHNSON Just by working there, and talking to Greg, and Katrina.

JUDGE What – what sort of conversation led you to believe that they – they were affiliated?

JOHNSON Well I had – I never really had checked my paycheck stubs because they paid me in cash directly. And so when I went and looked at my paycheck stubs I noticed that it said that Whole Life Ministries –

JUDGE I'm going (inaudible) –

JOHNSON - and so I asked about that.

JUDGE - because you've confused me. You said you didn't check your paycheck stub because they paid you in cash directly.

JOHNSON Yes.

JUDGE That's a little contradictory. Either they pay you in cash, or they pay you by check. Which one was it?

JOHNSON What they did was, they have – they go through a web site called Paycheckrecords.com

and they e-mail me my paycheck stub. But I never received an actual written check for anything like that. They would just pay me on my pay date with cash directly.

JUDGE Well was it direct deposited into a bank account?

JOHNSON No, it wasn't. Not until right before I ended working there.

JUDGE (Inaudible) –

JOHNSON For the first two years I was –

JUDGE All right.

JOHNSON - they paid me in cash.

JUDGE How did you actually receive the funds?

JOHNSON In cash.

JUDGE Who would give you the cash?

JOHNSON It was sitting in the – the cash drawer on pay days, and so I assumed it would be – it was usually – the amount was folded up into a paper and written on there what the total amount was. And it was usually Katrina's handwriting.

JUDGE And you were mailed a check stub?

JOHNSON No, e-mailed a check stub.

JUDGE E-mailed a check stub?

JOHNSON Yes.

JUDGE And who was the payee on the check stubs?

JOHNSON At first it said Whole Life Ministries and then they changed it to UBU Ministries.

JUDGE Can you describe the services you provided for Whole Life Ministries?

JOHNSON I was the cashier, I was the receptionist, I answered phones. I sat appointment dates. I kept daily logs of what was the weekly numbers, everything like that, all the cash that came into the –

JUDGE (Inaudible) –

JOHNSON - studio.

JUDGE - duties?

JOHNSON Sorry. what was that?

JUDGE The basic receptionist duties?

JOHNSON Yes.

JUDGE Now was this in – were these duties in reference to the – the church, or to the tattooing business?

JOHNSON To the tattooing business.

JUDGE Were you ever asked any questions relevant to the tattooing being part of the religious institution?

JOHNSON Clients would find out because there was in fine print at the bottom of the release form that they would sign, and they would ask about it, you know very seldomly (phonetic). And I would just tell them, you know, that the tattoo shop was a church pretty much. And I didn't really know much about the ministry itself so I was just mainly there for the tattooing.

JUDGE If somebody had a question about the religion itself were you qualified to answer those questions or would you have to refer those to somebody else?

JOHNSON I would refer them to somebody else. But I was never asked about the actual religion, or anything like that.

JUDGE Did you ever participate in any of the religious practices?

JOHNSON There was never like any services, or anything like that, ever held.

JUDGE Thank you. Ms. Henderson, do you have any questions for Ms. Johnson on this subject?

HENDERSON No, nothing additional at this time.

JUDGE (Inaudible) Lowrey, do you wish to question Ms. Johnson?

LOWREY Yes, Your Honor.

JUDGE Go ahead.

LOWREY The – do – do you recall us holding meetings – daily – daily morning meetings?

JOHNSON Concerning employees, and business things. yes.

LOWREY Do you remember the subject of those meetings?

JOHNSON The subject was as far as what we could do to be a better business, and things like that. I still have all of my meeting notes, and things of that nature. There was never anything to do with religion. or anything like that. It – it entailed questions, and conversations from notes out of a book.

LOWREY So you don't – you don't recall those meetings to be deemed – every single one of those meetings being meetings defining how to use the Golden Rule in – in your daily life?

JOHNSON Some of them, not all of them. The – pretty much the gist of them was, you know, how we could do better as a business. and you know, create a better – more revenue. and things of that nature.

JUDGE I'm going to pause you both for just a second. When you refer to the Golden Rule. Mr. Lowrey, are you – is this the same Golden Rule that we're all familiar with –

LOWREY Yes.

JUDGE - is do unto others as you would have do – done unto you?

LOWREY Yes.

JUDGE Okay.

LOWREY So you do remember having meetings that – that were about that topic though?

JOHNSON Some of them, yes. There was – it was only the people that worked for us though that were in the shop daily. It was never any outside guests. or anything like that.

LOWREY Do you recall those meetings being open to the public, or you – or that they (unintelligible) –

JOHNSON No, the doors were locked to the – the doors were locked to the studio. Everybody who worked there had a key and so that was the only way to enter in. And if people did show up we told them that they had to wait until the studio was open.

LOWREY Well I have a comment. I don't have any other questions.

JUDGE All right. what is your comment, Mr. Lowrey?

LOWREY Well I – our meetings were – all of our meetings were about applying our religious principals to our everyday life, and to – and to – how to better perform service to people. They were open to the public. They – we did lock the door. The – the doors were open until the meeting started. We locked the door when the meeting started, and we unlocked the door when the meeting was over to avoid disruption to our meeting. And, here again, it was pretty rare for us to have other people show up to our meeting but that wasn't from lack of inviting them to be there.

JUDGE Do you have any rebuttal to that comment, Ms. Henderson?

HENDERSON I don't. But I just have one question for Ms. Johnson, if we can revisit that.

JUDGE Go ahead.

HENDERSON I just wanted to know what that comment was, like at the bottom of the brochure, or the bottom of the policy, when they would eventually ask about what this – you know what it was. I guess what I'm trying to say is, did the individuals know they were coming to a church when they were coming to get their tattoo?

JOHNSON No, they didn't. At the bottom of the release form it said that your donation is tax deductible, and so people would ask about that. And – but yeah, it was – I didn't quit understand how it would be a donation because we had set prices. And a few times people would ask, you know – you know, they would try and barter pretty much, you know, and get the cost of the tattoo lowered. And we never, you know, lowered the cost, or anything like that. And so if they didn't like our prices they went elsewhere. So I never understood how that would be a donation, as far as, you know, pretty much if you didn't pay the price that was told to you, you didn't get the service done.

HENDERSON Okay, thank you.

JUDGE Any rebuttal to that. Mr. Lowrey?

LOWREY Oh, yeah. I don't think that – that – that Ms. Johnson, or – or Ms. Henderson, understands the – the definition of that isn't – isn't a donation. And they don't understand the – the idea that churches – churches raise money to – to pursue their religious mission. And they do that by collecting monies for services that they perform, and – and quite often those are specified amounts.

JUDGE Well that's a matter up for interpretation and I'll make my decision on that.

LOWREY Okay. The – Your Honor, the church they're most familiar with requires – that Mormon church out there, requires you to attend – to receive any temple services you have to pay 10% of your lifetime income. And that's a very specified amount that you have to pay. And non-Mormon churches have fixed prices for weddings, funeral, baptisms, for

counseling, for dances, for dinners. There's – they – they have (unintelligible) -

JUDGE (Inaudible) remember that we're discussing a – a donate (sic) – what the definition of a donation is.

LOWREY I – well I'm just saying that I don't think that Ms. Johnson, or apparently Ms. Henderson, is – is qualified to – to state what is and isn't a donate (sic) – a donation.

JUDGE Well I'm going to take both points of view into account. At this point I don't have any other questions for Ms. Johnson. Ms. Johnson, thank you for your time today. You can hang up the phone. Have a good afternoon.

JOHNSON Okay, you too.

JUDGE Bye, bye. I'm going to move on to closing statements at this time. I'm going to let Ms. Henderson go first, then Mr. Lowrey. I'll let you have the last word and then we'll be done for today.

LOWREY Okay.

JUDGE Ms. Henderson, anything to say in closing?

HENDERSON Yes. Just that on the information that was back in 2005 we did not issue a determination. A determination was not found for Whole Life Ministries. It was found that there were 2002 FUTA (phonetic) wages and therefore an investigation was assigned to a field auditor. And at that time the field auditor did not make a determination because they were unable to get a hold of the Employer to get information for that determination.

JUDGE ~~(Inaudible) stop you for a moment, Ms. Henderson. This is new information we didn't~~ discuss in the hearing. Is this information you've just pulled up?

HENDERSON Yes. While we were talking about –

JUDGE Well we're going to need to give Mr. Lowrey an opportunity to respond to that. So why don't you finish stating what you found and then we need to let Mr. Lowrey respond.

HENDERSON Okay. Back in June of 2005 we had reported 2002 FUTA wages, federal unemployment tax wages, of you know, approximately \$14,000.00. And we were attempting to request an exemption from the IRS from the Employer, which would have been Whole Life Ministries, in order to make a determination on whether they were subject to state unemployment. At that time we were unable to get a hold of Whole Life Ministries, or a representative from Whole Life Ministries, and therefore a no determination was issued.

JUDGE Okay. If you'd like to respond to that, Mr. Lowrey?

DEPARTMENT OF WORKFORCE SERVICES
APPEALS UNIT

Decision of Administrative Law Judge

Appellant

GREGORY ALLEN LOWERY
275 E STATE RD
AMERICAN FORK UT 84003-2434

Claimant

JACKLYN N EMMETT JOHNSON
640 SPRUCE ST
PLEASANT GROVE UT 84062-3715

EMPLOYER NO: 440433-0

CASE NO: 09-A-19944-T

APPEAL DECISION: The appeal was timely.

The Claimant provided a personal service for a wage which is subject to unemployment insurance contributions.

CASE HISTORY:

Appearances:	Appellant/Department Representative		
Date of Initial Determination:	October 1, 2009		
Date of Appeal:	October 9, 2009		
Issues to be Decided:	R994-508	-	Timeliness of Appeal
	35A-4-406(2)	-	Continuing Jurisdiction
	35A-4-208	-	Service for a Wage
	35A-4-204(1)	-	Contract of Hire
	35A-4-204(3)	-	Independent Contractor

The original Department determination held that Jacklyn N. Emmett Johnson, the Claimant, provided a personal service for a wage which constituted employment.

APPEAL RIGHTS: The following decision will become final unless, within **30 days** from **May 10, 2010**, further **written** appeal is received by the Workforce Appeals Board (PO Box 45244, Salt Lake City, UT 84145-0244; FAX 801-526-9244; or online at <http://www.jobs.utah.gov/appeals>) setting forth the grounds upon which the appeal is made.

FINDINGS OF FACT:

Timeliness of Appeal

The investigation determination was mailed to the Appellant on November 24, 2009. The determination contained the following information:

This decision will become final unless, within fifteen (15) days from the date of mailing, a written appeal is made setting forth the grounds upon which the appeal is made, the relief requested, and the date the appeal is mailed.

The appellants appeal was submitted prior to the appeal deadline.

Worker Status

The Claimant worked as an employee of and an assistant to Gregory Allen Lowrey, doing business as Happy Valley Tattoo. The Claimant performed secretarial and cleaning duties.

Mr. Lowrey also operates the religious entity UBU Ministries, formerly known as Whole Life Ministries. The art of tattooing is held as one of the religion's doctrinal tenets. Tattoo services are performed in the same facility the ministry conducts its religious services. None of the entities operated by Mr. Lowrey have an IRS exemption and none are recognized as religion by any government agency.

REASONING AND CONCLUSIONS OF LAW:

Timeliness of Appeal

Exhibit 23 is a copy of the envelope in which the Appellant sent its appeal. The post mark is unreadable. The date "12/9/09" is hand written next to the post mark, though neither party knew who wrote the date on the envelope. The introduction to the appeal, Exhibit 20, indicates that the determination was received by the Appellant on December 7, 2009, but there is no further information contained in the appeal indicating when the appeal was mailed. Mr. Lowrey was unable to remember the date he mailed the appeal and the auditor was unable to indicate when the appeal was received.

The Administrative Law Judge finds that there is insufficient information to show that the appeal was late. On this basis, the Administrative Law Judge finds that pursuant to Section 35A-4-406(2) of the Utah Employment Security Act the appeal was submitted timely.

Worker Status

Mr. Lowrey conceded that the Claimant was paid a wage and that she was an employee. However, he argued that the Claimant was an employee of a recognized religious institution and that wages paid to her were exempt from state unemployment tax. Mr. Lowrey submitted as evidence several IRS publications which address the exempt status of religions. He also submitted a precedent case in which another local religious institution was determined exempt from taxes. Mr. Lowrey confirmed that none of the entities which he operates have a 501(c)3 exemption, but his position was that by merely claiming the institution is a religion is sufficient to obtain exemption under the law. He also testified that in the past the Department of Workforce Services issued a determination in which it determined the Appellant was not subject to state unemployment tax. The auditor found no evidence of such a determination and Mr. Lowrey provided no evidence of the determination or any other evidence that a government agency recognized the Appellant as a legitimate religion.

Gregory Allen Lowrey
09-A-19944-T

- 3 -

440433-0

Since Mr. Lowrey does not dispute Sections 35A-4-208, 35A-4-204(1), 35A-4-204(3) of the Utah Employment Security Act, the Administrative Law Judge finds no reason to analyze the status of the Claimant's employment. The Claimant provided a personal service for a wage and absent any evidence which exempts the Appellant from reporting those wages, the wages are subject to unemployment insurance contributions.

DECISION AND ORDER:

Timeliness of Appeal

The appeal was timely within the requirements of Rule R994-508. The Administrative Law Judge, therefore, has jurisdiction to consider the matter appealed.

Worker Status

The Department's decision holding that the Claimant performed a service for a wage, constituting employment subject to unemployment insurance coverage, pursuant to Sections 35A-4-204(1), 35A-4-208, and 35A-4-204(3) of the Utah Employment Security Act is affirmed.



Roman Rubalcava
Administrative Law Judge
DEPARTMENT OF WORKFORCE SERVICES

Issued: May 10, 2010

RR/ap

FAX COVER PAGE

LEGAL SECTION

JUN 9 2010

1:00 PM

THIS PAGE + 16 PAGES

TO: UTAH WORKFORCE SERVICES
APPEALS UNIT

* APPEAL BOARD REVIEW

FAX # 801-526-9244

FROM: REV. GREGORY LOWREY
UBU MINISTRIES

PH # 248-259-2127

email - gregory.lowrey@gmail.com

1 of 17

LEGAL DEPT. 10A

JUN 10 2010
J.D.W.S.

1 To: Utah Department of Workforce Services
2 Appeals Unit

3
4 From: Reverend Gregory Lowrey
5 UBU Ministries

6
7 RE: Appeal of Decision of Administrative Law Judge, CASE # 09-A-19944-T

8
9 2 June 2010

10
11 This response is to initiate an Workforce Appeals Board review of this case.

12
13 I will address the specifics of the ALJ's decision.

14
15 I am also lodging a complaint regarding the entire appeal hearing that resulted in this decision.

16
17 This document consists of three parts.

18
19 Part 1: Outline of improprieties in case, hearing and decision. [line 27]

20
21 Part 2: Summary, Additional Explanation, Exhibits illustrating Part 1. [line 268]

22
23 Part 3: Summary description of all Exhibits [line 711]

24
25 Here are some of my issues which resulted in an illegal, unfair, biased and prejudiced hearing.

26
27 1) The decision primarily addressed an uncontested item that was not a subject of the appeal.

28
29 a) If Ms. Johnson was an employee.

30
31 i) Ms. Johnson's status as an employee of a church was not a matter of dispute.

32
33 ii) Ms. Johnson's blatant lie stating that she didn't know she worked for a church for the
34 first six months of her employment carried a lot of weight with the ALJ.

35
36 1) This decision ignored the fact that the employment contract [Exhibit 38] - on
37 the first line - declared the employment was between Whole Life Ministries (now UBU Ministries) and
38 Ms. Johnson.

39
40 2) The decision ignored the fact that every pay stub Ms. Johnson received (as
41 testified by Ms. Johnson) was from Whole Life/UBU Ministries.

42
43 3) According to Ms. Johnson's testimony during the hearing she had to explain
44 several times daily as part of her job that the tattoo services were services of the church.

45
46 4) It was testified during the hearing that multiple signage on the building clearly
47 identifies it as a church.

48
49 5) As testified during the hearing, in addition to the permanent signs painted in

foot tall letters on the front windows stating the name of the church, Ms. Johnson herself posted and daily cleaned around other signs identifying the church and its services, on the windows and doors that she passed every day entering and leaving the building.

6) As testified by Ms Johnson in the hearing, all paperwork handled daily by Ms. Johnson clearly and prominently identifies the church, often in more than one location.

7) Ms. Johnson attended daily church meetings teaching the universal application of the Golden Rule which is the foundational tenet of UBU Ministries. [Exhibit 54]

8) In addition to regular signage Ms. Johnson posted, Ms Johnson testified during the hearing that she regularly explained to patrons newspaper articles regarding local government discrimination against the church posted to the front door and handed out by her to patrons from her work area.

9) As testified in the hearing, Ms. Johnson was often required to place a sandwich board sign outside advertising the daily church meetings that the church held and which she attended.

10) It was never demonstrated that Ms. Johnson was opposed to working for a church - in fact she was quite proud of it.

11) It was never demonstrated that Ms. Johnson would have refused employment from a church.

12) The employment contract she signed specifies that there are no benefits.

13) Regardless of Ms. Johnson's claim in this regard, the facts are that she did work for a church. Her purported ignorance does not change the status of the church in law.

14) IRS section 35 stipulates that [Exhibit 39] this section does not apply due to section 3306 (b)(1).

2) The decision appears to have been based on personal opinions that are contrary to law and evidence.

a) The ALJ's musings regarding the religious practices of UBU Ministries [Decision pg. 2].

i) This information introduced to the decision fails to arrive at any legitimate conclusion.

ii) The decision affirms that tattooing is a religious practice of the church and then disregards the implications of this admission.

b) The ALJ alleges statements to Gregory Lowrey such as "none of the entities which he operates have 501.c.3 status", "his position was that by merely claiming the institution is a religion is sufficient to obtain exemption under the law" [Decision pg. 2]

i) The allegations are false.

- 99
100 ii) The allegations are not germane to the appeal.
101
102 iii) The conclusions of the ALJ contradict Federal and Utah Law.
103
104 e) The ALJ demeans our church and tramples constitutionally protected, unalienable rights.
105
106 f) The ALJ concludes that Ms. Johnson is entitled to state benefits denied to church employees.
107
108 g) The ALJ concludes that non-employers are subject to participation in the unemployment
109 fund.
110
111 h) The ALJ attempts to exercise powers over religious exercise that he does not possess.
112
113 i) The ALJ blatantly ignores the law and the evidence, preferring his (and the field agent's)
114 unsupportable personal opinions.
115
116 3) The ALJ refused to hear any of my witnesses.
117
118 a) One of the first actions by the ALJ was to refuse to hear my witnesses who would have:
119 i) substantiated the religious nature of our services
120 ii) the holding of daily religious training meetings
121 iii) regular Sunday Services
122 iv) performance of healing and counseling services concurrent with and often part of
123 tattoo and piercing services
124 v) the subcontractor and ministerial status of other workers
125 vi) that Ms Johnson was the ONLY employee
126 vii) the dishonest, disruptive nature of Ms. Johnson's conduct and other policy
127 violations which resulted in her firing
128 viii) church signage
129 ix) Ms Johnson's knowledge that she worked for a church
130 x) donations for tattoo services are used exclusively to further the purposes of the
131 church
132 xi) performance of charity services of all varieties including tattoo, piercing, healing
133 & counseling of which Ms Johnson was often a recipient
134
135 4) The ALJ refused to consider the specific charges made by Workforce Services in Exhibit 18 & 19.
136
137 a) Gregory Lowrey is not an employer as claimed by Workforce Services.
138
139 b) Gregory Lowrey does not own the DBA Happy Valley Tattoo & Piercing as claimed by
140 Workforce Services.
141
142 c) Happy Valley Tattoo & Piercing is not an employer as claimed by Workforce Services.
143
144 d) Ms. Johnson was employed by a church as she claimed on her application.
145
146 e) Other workers were independent contractors and did not fit the IRS section 35 definition of
147 an employee as claimed by Workforce Services.

- 148
149 f) IRS section 35 does not define what is an "employer" as claimed by Workforce Services.
150
151 g) NONE of the specifics demanded by IRS section 35 are met. [Exhibits 25 – 29, 42 - 45]
152
153 h) IRS section 35 is completely misapplied as it addresses only taxing of individuals on
154 dividends gained from pension trust accounts.
155
156 i) The field agent claims UBU Ministries is not a church. [Exhibit 19, Decision pg. 2]
157
158 j) There was NO REAL INVESTIGATION - only contradictions of what legitimate facts were
159 gathered and unsubstantiated allegations by Ms. Johnson, the field agent and ALJ.
160
161 a) Field agent contradicted the written statement of the claimant that she worked for a church.
162 [Exhibit 3]
163
164 i) The ALJ sustains that contradiction by ignoring facts of law and sustaining
165 unsupportable allegations by claimant.
166
167 b) The demands of IRS section 35 - the basis for the determination - are not met as alleged.
168
169 i) No effort was made by Workforce Services to substantiate their claims.
170
171 ii) Both the field agent and the ALJ ignore the exhibits which contradict their claims.
172
173 c) The field agents "investigation" was weak.
174
175 i) Consisted of claimant responses to questions asked during the application process as
176 found in the field agents one page of notes taken during the intake interview. [Exhibit 17]
177
178 ii) Dept. of Commerce documents include citations to the record that the field agent
179 misconstrues and the ALJ ignores.
180
181 d) The claim by the field agent that UBU Ministries does not qualify as a church are
182 unsubstantiated claims.
183
184 e) Workforce Services (including the ALJ) ignores the IRS definition of 501(c)(3) organizations
185 and churches.
186
187 f) Claimant's statement that there were employees besides herself are false and unsubstantiated.
188
189 g) Both the field agent and the ALJ reject documentation by Utah Department of Commerce
190 regarding:
191
192 i) Status of UBU Ministries.
193
194 ii) Ownership of DBA Happy Valley Tattoo & Piercing.
195
196

h) The status of other workers as subcontractors is rejected by the field agent without substantiation or consideration of the IRS code she refers to.

6) The ALJ did not consider any of the Exhibits beyond the intake application and the field agent's notes.

a) These are the exhibits that treat the issues being appealed. [Exhibits 3, 4, 17]

b) The field agent and ALJ relied exclusively on Ms. Johnson's statements, without substantiation while showing a wholesale disregard for statements of fact and documentation provided by Gregory Lowrey.

c) The field agent and ALJ ignored or misrepresented documentation of the church's status.

7) I was not allowed to address the exhibits.

a) These exhibits show conclusively by examination of IRS section 35 that the conclusions of Workforce Services fail.

b) After wasting a lot of time on uncontested issues and extracting unsupportable and irrelevant allegations from claimant the ALJ announced that he refused to continue the hearing.

i) The ALJ indicated that even though he was ending the hearing that he would consider all the exhibits before making his decision.

ii) From the decision rendered it is obvious that the ALJ did not consider all the exhibits except for the original allegation of the field agent.

8) Investigation and taxation of churches is outside of Workforce Services jurisdiction.

a) There simply is no law giving Workforce Services jurisdiction over churches.

b) The agent proposed IRS section 35 as such, but a simple reading of that code [Exhibit 39] shows it does not apply.

c) The United States and Utah Constitutions both specify that NO LAW can be made to regulate religious exercise. [Exhibit 29]

d) Recent United States Supreme Court decisions (noted in the decision) stipulate investigation and judgment of religious legitimacy is outside of government jurisdiction and is a violation of The Constitution due to the potential chilling effect on religious exercise. [Exhibits 46 - 49]

i) This means that the entire proceeding was illegal.

ii) The ALJ and field agent recognized this and sought to worm their way around the law by willful misapplication of facts.

9) The decision was predetermined against the church based on personal bias.

246 a) The field agent and ALJ were blatant in their determination to discredit and denigrate the
 247 religious beliefs of UBU Ministries. [Exhibit 19, Decision pg. 2]
 248
 249 b) The field agent and ALJ relied entirely on those portions of Ms. Johnson's testimony that
 250 supported their prejudice while rejecting portions that did not.
 251
 252 i) They rejected her statement that she worked for a church. [Exhibit 3]
 253
 254 ii) They also accepted her ludicrous statement that she didn't know she worked for a
 255 church. [see Exhibit 38 – employment contract]
 256
 257 c) The agent and ALJ were determined to discriminate and deny religious exercise from the
 258 outset. [for example, I participated in an official capacity as an agent for UBU Ministries. The ALJ
 259 referred to me as Reverend Lowrey during the hearing but all paperwork refers to me as Gregory
 260 Lowrey and limits and/or eliminates reference to UBU Ministries]
 261
 262 d) The agent and ALJ showed complete and total disregard for and disinterest in the law,
 263 especially as it applied to the specifics of the case.
 264
 265 e) In addition to others, the decision shows a willful violation of the 14th Amendment, section
 266 3 of the United States Constitution.
 267
 268 PART 2 - ADDITIONAL COMMENTS, CITATIONS AND REFERENCES TO SPECIFIC EXHIBITS
 269 RELATED TO THE FOREGOING.
 270
 271 This case brought by Workforce Services required I spend hundreds of hours neglecting my religious
 272 responsibilities to prepare my response to these fraudulent charges.
 273
 274 I am more than a little distressed to have the ALJ decide that he just didn't want to take the time to hear
 275 my witnesses or consider my exhibits.
 276
 277 My witnesses had all taken off work and were waiting by the phone for two hours for the call from the
 278 ALJ that never came. (see lines 119 – 133 of this document)
 279
 280 The decision makes no reference to any of the disputed elements of Workforce Services claim (THE
 281 PURPOSE OF THE APPEAL)
 282
 283 The ALJ only focused on the undisputed fact that Ms. Johnson was an employee and the fact that UBU
 284 Ministries does not desire 501.c.3 status.
 285
 286 In the decision he makes FALSE AND UNSUPPORTED statements regarding the status of Gregory
 287 Lowrey, Happy Valley Tattoo, UBU Ministries and the IRS Codes cited.
 288
 289 The ALJ appears to have not even read the exhibits.
 290
 291 The "test" of Workforce Services regarding church meetings is arbitrary, without legal foundation and
 292 irrelevant to our status as a church.
 293
 294 Churches cannot be dictated to as to how they teach or promote their doctrines and services.

295
 296 We were not given the opportunity to have Ms. Johnson state that she had never come to the church
 297 meetings held every Sunday afternoon, even though she was invited or that she never, ever came to the
 298 church building on her days off and so had no idea what the church was doing on Sundays. (holding
 299 church meetings additional to meetings held on 5 other days of the week)
 300
 301 I HERE ADDRESS IN MORE DETAIL THE SPECIFICS OF THE DECISION WITH CITATIONS
 302 TO THE EXHIBITS
 303
 304 Appeals Decision pg. 2
 305
 306 Worker Status
 307 The claimant worked as an employee of and an assistant to Gregory Allen Lowrey, doing business as
 308 Happy Valley Tattoo.
 309
 310 Response:
 311
 312 Ms. Johnson in her Status Questionnaire for Workers clearly states that she was employed by Whole
 313 Life Ministries, not by Gregory Allen Lowrey. [Exhibit 3]
 314
 315 Gregory Allen Lowrey has never done business as Happy Valley Tattoo.
 316
 317 Happy Valley Tattoo and Piercing is a DBA owned by UBU Ministries (formerly Whole Life
 318 Ministries). (EXHIBITS 5, 6, 7, 8, 9, 31 & 32)
 319
 320 The DBA Happy Valley Tattoo and Piercing was not intended to represent a business or to conduct
 321 business.
 322
 323 This is similar to LDS descriptions of activity such as Elder's Group, Relief Society, Young
 324 Women/Men etc. and does not describe a separate entity or an activity separate from the church.
 325
 326 The use of Happy Valley Tattoo is simply for the benefit of those seeking this spiritual service.
 327
 328 The acquisition of an official DBA was only to protect the name from use by other unrelated groups in
 329 order to avoid confusion for members.
 330
 331 Happy Valley Tattoo and Piercing has never had employees and has never functioned in any manner as
 332 an entity separate from the church.
 333
 334 On her application [EXHIBIT 3] Ms. Johnson clearly states in line (1) that she worked for a church.
 335
 336 Conclusion:
 337
 338 The ALJ failed to correctly determine his factual findings are not supported by factual evidence.
 339
 340 Gregory Lowrey did not employ Ms. Johnson.
 341
 342 Happy Valley Tattoo is not owned by Gregory Lowrey.
 343

344 Happy Valley Tattoo did not employ Ms. Johnson.
 345
 346 Ms. Johnson states she worked for a church.
 347
 348 She is not eligible for unemployment insurance benefits.
 349
 350 Gregory Lowrey and Happy Valley Tattoo are not liable for payments into the unemployment fund.
 351
 352 UBU Ministries is operated by Gregory Lowrey the same way the Pope operates the Catholic Church
 353 or the President of the LDS Church operates the LDS Church.
 354
 355 Rev. Lowrey is an agent and officer in the church and does not own it.
 356
 357 UBU Ministries is an legally incorporated religious entity, separate from it's officers.
 358
 359 The ALJ notes that tattooing is one of "the religious doctrinal tenets" and that "tattoo services are
 360 performed in the same facility the ministry conducts its religious services. (that would be our church
 361 building) (Administrative Decision Page 2 - Worker Status)
 362
 363 The ALJ states "None of the entities operated by Mr. Lowrey have an IRS exemption and none are
 364 recognized as religion by any government agency." (pg. 2 - Worker Status)
 365
 366 This is simply misleading and not accurate.
 367
 368 These factual findings are not supported by substantial evidence.
 369
 370 1) Reverend Lowrey does not operate any "entities" unless you consider his position as an agent of
 371 UBU Ministries as "operating".
 372
 373 2) Gregory Lowrey is not an entity or an employer.
 374
 375 3) Happy Valley Tattoo is an DBA only
 376 and
 377 a. does not conduct business or employment
 378 b. is not owned by Gregory Lowrey
 379
 380 4) There is therefore only one "entity" that can come under consideration; UBU Ministries.
 381
 382 5) UBU Ministries is recognized as a religion by the IRS and the State of Utah as shown in the
 383 Articles of Incorporation [Exhibit 29]. Even the ALJ refers to UBU Ministries as a religion [Decision
 384 pg. 2], thus Utah Workforce Services recognizes UBU to be a religion [Decision pg 2].
 385
 386 6) UBU Ministries is legally organized as a religious corporation according to Utah incorporation
 387 law. (EXHIBITS 29 & 30)
 388
 389 7) UBU Ministries satisfies IRS definitions of a church. (EXHIBITS 33, 34, 35, 36, 37)
 390
 391 8) IRS clearly recognizes churches as "automatically tax exempt". (see EXHIBITS above)
 392

9) IRS clearly states that churches need not apply for IRS recognition of the tax exempt status that churches "automatically" have AND non 501.c.3 churches are not governed by the same tests or rules that apply to 501.c.3 churches. (see EXHIBITS above) UBU Ministries does satisfy that test though not required to.

10) The ALJ's finding was contrary to the evidence which UBU Ministries presented regarding the above issues.

11) The reality is that there is only ONE ENTITY and it is a legally organized and legally operated church, exempt from government oversight or regulation.

All of the supporting documents for these matters were presented during the appeals hearing and can be found in the exhibits. (summary of exhibits contained in section 3)

Pg. 2

Worker Status:

The ALJ here seems to suggest that my "claim" that Ms. Johnson was "an employee of a recognized religious institution" is somehow false.

Ms. Johnson's employment contract is between herself and UBU Ministries. (Then Whole Life Ministries) (EXHIBIT 38)

Ms. Johnson's payroll was made by UBU Ministries. She admits in the hearing that every one of her pay stubs indicated payment from Whole Life Ministries or UBU Ministries (after the name change)

Ms. Johnson states in her application to Workforce Services that she worked for a church. (EXHIBIT 3) UBU Ministries IS a recognized religious institution.

Again the ALJ goes on with his "none of the entities" have 501.c.3 status, in spite of his statement made just previous, that evidence from the IRS was presented addressing the exempt status of religions.

This evidence from the IRS clearly states that churches do not need 501.c.3 status as they are "automatically exempt" - needing no formal IRS recognition. (EXHIBIT 34 & 36)

I might note here that it is not the IRS that exempts religion from taxation, it is the United States (also Utah) Constitution that recognizes religion to be outside of government regulation. (EXHIBIT 29)

The IRS here is simply acknowledging what the 1st amendment points out, that they have no authority to tax or regulate churches.

It appears that Workforce Services is refusing to recognize UBU's Constitutionally Guaranteed rights to religious freedom.

The IRS may regulate to a degree only those churches that apply to obtain 501.c.3 status, but has no such controls over churches that decline to seek 501.c.3 recognition.

According to the IRS the choice by a church to not seek 501.c.3 recognition does not alter their tax

442 exempt status in the slightest.
443
444 All of this information was presented from basic IRS documents. (EXHIBITS 33, 34, 35, 36, 37)
445
446 The ALJ stated that my position was "that by merely claiming the institution is a religion is sufficient to
447 obtain exemption under the law". [Administrative Decision pg. 2]
448
449 That was not my position and is not my position.
450
451 By listening to the recorded hearing it will be obvious that I never made such a statement.
452
453 What does the ALJ intend by the use of the term "merely" except to cast aspersions on UBU's sincerity
454 and suggest that our religion our ministers and members are frauds?
455
456 He implies that our religious expression is somehow of less value - or of no value or legal standing
457 simply because one of our religious tenets is that tattooing is a spiritual exercise?
458
459 I consider this claim by the ALJ to be not only a misrepresentation but an overt effort to denigrate the
460 legitimacy of our religious history and set the foundation for his attempt to discriminate against our
461 constitutionally protected religious expression.
462
463 UBU Ministries is a legally incorporated church which has functioned as a church in every regard, by
464 any test, for over 20 years. (since 1986) (In Utah since 2000) (EXHIBIT 29 & 30)
465
466 The ALJ's statements seem an attempt to belittle and dismiss the religious beliefs and years of religious
467 service by myself and (approximately TWENTY THOUSAND) members of the UBU Church
468
469 From what source does Workforce Services derive it's claim to authority to determine what is and is not
470 a church?
471
472 FOR EXAMPLE:
473
474 If I don't personally approve of your system of religious belief, my opinion does not invalidate your
475 right to freedom of religious exercise.
476
477 I may hold the personal opinion that circumcision is barbaric and without value to the spiritual quest of
478 infants but my opinion does not mean the Jewish Religion is not a religion.
479
480 I may hold the opinion that infant baptism is of no spiritual value to the infant who has no concept of
481 the action being taken but my opinion does not mean the Catholic Religion is not a religion.
482
483 I may hold the personal opinion that the Mormon Temple practice of washing and anointing, where
484 nude patrons are repeatedly fondled with bare hand to bare skin on nearly all portions of their bodies
485 (including breasts and genitals) and then dressed (not assisted) by another person in an undergarment is
486 not a spiritually promoting practice but I do not have the right to declare Mormonism to not be a
487 legitimate religion.
488
489 Why exactly is there a 1st amendment anyway, except to declare that government - Utah Workforce
490 Services included - has no right to determine or regulate what is and is not religious exercise?

491
 492 Perhaps a review of the 1st amendment would be in order.
 493
 494 Utah State Constitution
 495 ARTICLE I
 496
 497 Section 1. [Inherent and inalienable rights.] All men have the inherent and inalienable right to enjoy
 498 and defend their lives and liberties; ... to worship according to the dictates of their consciences; ...
 499
 500 Sec. 3. [Utah inseparable from the Union.] The State of Ūtañ is an inseparable part of the Federal
 501 Union and the Constitution of the United States is the supreme law of the land.
 502
 503 Sec. 4. [Religious liberty.] The rights of conscience shall never be infringed. The State shall make no
 504 law respecting an establishment of religion or prohibiting the free exercise thereof, ...
 505
 506 The Bill of Rights of the United States of America
 507
 508 Amendment I
 509 Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise
 510 thereof...
 511
 512 Amendment XIV
 513 Section 1.
 514 All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens
 515 of the United States and of the State wherein they reside.
 516 No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of
 517 the United States; ...
 518
 519 for the Department of Workforce Services to determine whether UBU Ministries is a church infringes
 520 on my rights of conscience and the free exercise of my religion.
 521
 522 I presented in the hearing a recent United States Supreme Court Ruling which confirms that
 523 governments do not have the right to make inquiry into or judgment of what is and is not religion.
 524 [Exhibits 46 - 49]
 525
 526 I would like to be appraised of the law that authorizes government to discriminate between religions in
 527 the application of law. There is not one, in fact it is prohibited.
 528
 529 As the Appeals Board reviews the two hours of tape recorded appeal hearing, they will notice that these
 530 points were covered in detail and the ALJ was obviously surprised to learn what the actual LAW is
 531 regarding religion and the actual IRS interpretation of the LAW.
 532
 533 But this ALJ chose to entirely disregard the LAW and the IRS - which presumably is where he claims
 534 his authority - to recklessly trample on our INALIENABLE RIGHTS in spite of the evidence clearly
 535 and exhaustively presented.
 536
 537 Social Anthropology has clearly confirmed that Tattooming and Piercing have an over 30,000 year
 538 history in all ages and on all continents as a religious, spiritual practice, including Hebrew, Christian
 539 and even Mormon (yes, it is documented in the Logan (Utah) Herald Journal that during the 1950's the

540 LDS church had an ongoing program promoting and performing tattooing in the basement of the Logan
541 Tabernacle). [see <http://www.conelrad.com/atomicsecrets/secrets.php?secrets=11>] and are practices
542 supported by adherents to the Bible. [see [http://www.tat2me.com/2010/03/yes-mormon-church-once-](http://www.tat2me.com/2010/03/yes-mormon-church-once-actually.html)
543 [actually.html](http://www.tat2me.com/2010/03/yes-mormon-church-once-actually.html)]
544

545 Tattooing and piercing are two of UBU's religious and spiritual practices.
546

547 I provided additional information that UBU had been audited by the IRS, even providing the name,
548 address and phone number of the IRS agent in Provo who conducted the audit, and that the IRS
549 considered UBU to be a legitimate church and our workers to be legitimate sub-contractors. (EXHIBIT
550 28)
551

552 Documents from the Utah Department of Commerce correctly identify the nature and correct
553 ownership of the DBA in question and UBU's incorporation as a church.
554

555 These relationships were clearly presented by both myself and the field agent but ignored by the ALJ.
556 (EXHIBITS 5, 6, 7, 8, 9, 31 & 32)
557

558 Back to the Decision:
559 still page 2 - Worker Status
560

561 "The auditor found no evidence of such a determination" that "Workforce Services has previously
562 determined the Applicant was not subject to state unemployment tax."
563

564 Perhaps the auditor was looking for a determination for Gregory Lowrey or for Happy Valley Tatco or
565 for UBU Ministries instead of Whole Life Ministries (changed to UBU only a year past).
566

567 Also, the auditor apparently, could find no evidence that "recognized the Appellant as a legitimate
568 religion." [Decision pg. 2]
569

570 UBU is certainly recognized as a "legitimate religion" by the Utah Dept. of Commerce, the IRS, the
571 United States and Utah Constitutions and was properly organized according to Utah State Law.
572

573 All of this proof was presented during the appeal and is even contained in the field agent's own limited
574 "investigation" - proofs the agent and ALJ apparently choose to ignore.
575

576 Who is this auditor? Where did they look? Perhaps and most likely, they simply did not look at all.
577

578 In the tape recorded appeal hearing of 3 March 2010 the field auditor confessed that the only research
579 she conducted was to review the application filled out by Ms Johnson,
580

581 She essentially did no research at all!
582

583 She admits her entire case was based only on the statements of Ms. Johnson - except in the instances
584 where the field agent decided to not accept the written declaration by Ms. Johnson on her application
585 (line 1 - hard to miss) that she worked for a church and her assumption that Ms. Johnson's statement
586 that there were other employees meant that UBU's declaration that the "others" referred to were not
587 employees but independent contractors, failed the IRS definition without bothering to make any
588 investigation of that assumption at all.

The entire so called "investigation" is recorded as EXHIBIT 17, which appear to be notes taken during the intake interview with Ms. Johnson.

The IRS section 35A-4-204(2)(e) that supposedly gives Workforce Services the right to tax churches, is simply a definition of what is an EMPLOYEE for the determination of who must pay tax on dividends from certain pension trusts.

Nowhere does that section of IRS code define what is an EMPLOYER as Workforce Services claims.

Additionally, the IRS code is specific (see Exhibit 18) that

A) the service must be excluded from [the definition of] employment - "solely by reason of Section 3306" which deals only with pension plans and who must pay tax on dividends earned

and

B) that there were 4 or more employees, (also from section 3306 as apparently if there were less than 4 persons participating in the pension trust account, they do not have to pay tax on dividends).

Both items must be met (EXHIBIT 18) and they only apply specifically as defined in the code.

I submitted EXHIBITS 25, 26 & 27 which established that the "other employees" were not employees but independent contractors satisfying EVERY point of determination presented in the IRS definition of such.

On page 3 of the Decision is the statement "absent any evidence which exempts the Appellant from reporting... the wages are subject to unemployment contributions."

Essentially EVERY SINGLE ISSUE raised by Workforce Services was completely and totally rebutted in detail, the sections of code were dissected line by line and the contentions held by Workforce Services were shown to be COMPLETELY FALSE IN EVERY REGARD.

With the 31 EXHIBITS I provided, (and the 23 EXHIBITS from the field agent) somehow the ALJ was unable (or unwilling) to discover any of this profound error and outright negligence and deception on the part of the field agent in this case.

I do not feel I could have made it any clearer.

Ms. Johnson was fired for a variety of reasons explained in EXHIBITS 24 & 25 all of which revolved around her basic DISHONESTY, [Exhibit 24] yet her word alone was the entire basis of the complaint and the decision - and even her statements of fact (that she indeed was employed by a church) (EXHIBIT 3) were disregarded by the Workforce Services agent and ALJ when they did not support their apparent desire to DISCRIMINATE against Gregory Lowrey and UBU Ministries.

Also, Ms. Johnson claimed that the church held no meetings, yet she testified she attended daily meetings expressly designed to teach people how to apply our religious precepts in every day life.

She claims that the public was not invited and that the doors were locked during meetings, but fails to

638 recall that she was the one who posted the permanent sign on the door (and cleaned around it daily)
 639 inviting the public to these meetings and also placed a sandwich board sign outdoors inviting the public
 640 to these meetings and that the signs specified that the door would be locked during the meeting.
 641
 642 She denied that there were times when patrons did attend the public meetings.
 643
 644 That was a lie.
 645
 646 We were also not allowed to provide evidence that many tattoo, piercing, healing and counseling
 647 services were performed at no charge as a charity service - nearly every day and often several times
 648 daily.
 649
 650 Ms Johnson and several of her friends were often the recipients of such services and Ms. Johnson
 651 facilitated the receipt of those services for many, many others.
 652
 653 In fact, Ms. Johnson brought her children in often for healing services and broadcast far and wide the
 654 benefit they received - but the ALJ refused to allow me to address those issues.
 655
 656 Contrary to the apparent opinion of the ALJ, the holding of public meetings (even though we have
 657 always held them 6 days per week) is not a legal determination of what is and is not a church.
 658
 659 Ms. Johnson's changing perspective regarding what constitutes a church meeting is also not a legal
 660 determinant of what is or is not a church meeting.
 661
 662 Most of our services involve personal spiritual guidance which is offered (by our ministers only, or
 663 those in advanced studies for the ministry) all day, every day.
 664
 665 We also publish literature and hold both live and recorded meetings on the Internet via our website.
 666
 667 Ms. Johnson received many charity services from our church (employment was one of several she
 668 received herself) and yet apparently fails to recognize that we are performing charity work - even when
 669 she is the recipient, and again, the ALJ did not give us the opportunity to explore this issue.
 670
 671 The plain facts are that we are a church and have been since 1986.
 672
 673 All our services are performed by ministers or students of the ministry - the only exception being the
 674 receptionist (Ms. Johnson's position).
 675
 676 Since the decision, Ms. Johnson has been bragging all over Utah that she "got us" and that she is going
 677 to "sue us for millions" and "own Happy Valley Tattoo" (meaning the church).
 678
 679 One of our witnesses (Reverend Steven Bosh) - who was not allowed to testify - has received numerous
 680 phone calls and in person visits by concerned parties regarding Ms. Johnson's claims and the impact
 681 that would have on us.
 682
 683 Ms. Johnson's testimony is fraudulent and without merit and founded in an attempt to receive
 684 unemployment insurance monies she is not entitled to and to malign UBU Ministries for firing her.
 685
 686 The investigation of the field agent and the ALJ's decision are intentional efforts to discredit UBU

687 Ministries and deny our rights to free exercise of religion.
688
689 I believe I have conclusively demonstrated that the facts of this case clearly show UBU Ministries
690 satisfies the exceptions described in the Utah Workforce Services code, specifically 35A-4-204(2)(c)
691 and 35A-4-205(1)(i). [Exhibits 42 - 45]
692
693 It was explained to me by the Workforce Services Appeals Unit that the Appeals Board would review
694 the entire recording of the March 3rd, 2010 hearing as well as every exhibit that was provided.
695
696 I expect that such will be the case.
697
698 Meanwhile I have lodged a complaint with the Department of Justice and promise that I will pursue
699 this infringement of our constitutionally protected rights to vindication.
700
701 Sincerely,
702 Reverend Gregory Lowrey
703 Legal Affairs and Government Liaison Office
704 UBU Ministries
705
706 cc: Reverend Steven Bosh, UBU Ministries
707 David Holdsworth, Attorney
708 Eric Treene, Special Counsel for Religious Discrimination, United States Department of Justice
709 American Civil Liberties Union
710
711 PART 3
712
713 SUMMARY DESCRIPTION OF ALL EXHIBITS
714 Exhibit:
715 1 Claims Investigation Worksheet
716 2 " pg 2
717 3 Status Questionnaire For Workers
718 4 " pg 2
719 5 Utah Dept of Commerce Registration Renewal – Happy Valley Tattoo & Piercing
720 6 Utah Dept of Commerce Summary of Online Changes – Address Change
721 7 " pg 2
722 8 " Correction of NAICS CODE
723 9 Utah Dept of Commerce DBA Application – Happy Valley Tattoo & Piercing
724 10 Website – Happy Valley Tattoo & Piercing (with field agent notes)
725 11 " pg 2 (paragraph 5 – tattooing a spiritual service)
726 12 " pg 3 About Us (artists and ministers)
727 13 " pg 4 (paragraph 2 tattoos are spiritual emblems/application is spiritual service)
728 14 " pg 5 (policies)
729 15 " pg 6 (policies – recommended donations)
730 16 " pg 7 (policies cont.)
731 17 Field Agent Notes
732 18 Workforce Services Letter of Determination and statement of case
733 19 " pg 2
734 20 Reverend Gregory Lowrey Response to Letter of Determination
735 21 " pg 2 (citation of Supreme Court Decision in Presiding Bishop vs. Amos, use of

736 that decision in Utah Tax Case, Religious Freedom Restoration Act, Honest Services Law)
737 22 " pg 3 (Honest Services Law cont. and summary, close)
738 23 Envelope for letter in exhibits 20 – 22
739 24 Response to Workforce Services Claims (IRS Tax Exceptions, Other Workers
740 Subcontractors, Summary of Contested Items – Elements of Claimant's Discharge from Employment)
741 25 pg 2 summary of contested items – IRS definition of subcontractor satisfied
742 26 pg 3 "
743 27 pg 4 " IRS Tests – Court Rulings
744 28 pg 5 " IRS Audit of Whole Life Ministries, IRS test for 501.c.3
745 29 pg 6 United States & Utah Constitution excerpts, Utah Articles of
746 Incorporation – Whole Life Ministries excerpt
747 30 pg 7 "
748 31 Utah Dept of Commerce Entity Search – DBA Happy Valley Tattoo & Piercing
749 32 Utah Dept of Commerce Registered Principal Search – UBU Ministries (shows ownership of
750 DBA Happy Valley Tattoo & Piercing)
751 33 Churches Need Not Apply For IRS Recognition of Exemption – Churches Automatically
752 Exempt
753 34 " pg 2 Organizations Not Required To File, IRS Tests
754 35 " pg 3 Additional IRS Exemptions including FICA & FUTA
755 36 " pg 4 IRS 501.c.3 – Automatic Exemption for Churches, IRS Test
756 37 " pg 5 IRS contact information
757 38 Whole Life Ministries Employment Contract (employee & subcontractor)
758 39 Federal Unemployment Tax Act excerpt, Some Organizations Not Required to File
759 40 "
760 41 Summary of Workforce Service claim UBU Ministries NOT A CHURCH and rebuttal.
761 42 " begin Analysis of Tax Code 35 A (foundation of Workforce Services Claim)
762 43 " pg 2 Definition of Employer, Employment, Exemption from Tax
763 44 " pg 3 Law and Analysis, Exempt Organizations, Church Plans
764 45 " pg 4 Charitable Contributions and Gifts
765 46 U.S. Supreme Court, CORPORATION OF PRESIDING BISHOP v. AMOS, 483 U.S. 327
766 (1987) – Excerpts, Utah District Court Test OVERTURNED by U.S. Supreme Court
767 47 " pg 2 Primary function of industry and religious tenets of church, case by case
768 determination of activity to be secular or religious in nature is inappropriate. Activities protected by
769 Free Exercise Clause.
770 48 " pg 3 character of activity is not self-evident, chilling effect on religion,
771 religions right to self-definition, autonomy of religious organizations demands categorical exemption
772 49 " pg 4 Religious character of entity formed for any lawful purpose,
773 accommodation of religious exercise
774 50 UBU Ministries Website – header
775 51 " Services We Provide – Tattoos Spiritual Service, Sunday Live Church Services
776 52 " cont.
777 53 Happy Valley Tattoo & Piercing Website – header
778 54 " About Us page adjusted to correct webmaster errors (owner vs. management)
779 55 " cont.
780

Form BRDEC

WORKFORCE APPEALS BOARD
Department of Workforce Services
Division of Adjudication

GREGORY ALLEN LOWREY

Employer No. 4-40433-0

:

Case No. 10-B-00769-T

:

DEPARTMENT OF WORKFORCE SERVICES

DECISION OF WORKFORCE APPEALS BOARD:

The decision of the Administrative Law Judge is affirmed.

Services performed by Claimant constitute employment subject to coverage.

HISTORY OF CASE:

In a decision dated May 10, 2010, Case No. 09-A-19944-T, the Administrative Law Judge affirmed a Department decision holding that services performed by the Claimant as an assistant to Gregory Allen Lowrey, doing business as Happy Valley Tattoo, constituted employment subject to unemployment insurance coverage.

JURISDICTION OF WORKFORCE APPEALS BOARD:

The Workforce Appeals Board has authority to review the Administrative Law Judge's decision pursuant to §35A-4-508(4) and (5) of the Utah Employment Security Act and the Utah Administrative Code (1997) pertaining thereto.

EMPLOYER APPEAL FILED: June 9, 2010.

ISSUE BEFORE WORKFORCE APPEALS BOARD AND APPLICABLE PROVISION OF UTAH EMPLOYMENT SECURITY ACT:

Were the services performed by the Claimant on behalf of the Employer considered employment subject to unemployment insurance coverage pursuant to the provisions of §§35A-4-204 and 35A-4-208?

FACTUAL FINDINGS:

The Workforce Appeals Board adopts in full the factual findings of the Administrative Law Judge.

REASONING AND CONCLUSIONS OF LAW:

This appeal arose from an investigation by the Department of an unemployment insurance claim filed against Happy Valley Tattoo and Piercing (Happy Valley) by an alleged former employee

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GREGORY ALLEN LOWREY

(Claimant). Upon discovering no unemployment insurance contributions had been made for the Claimant upon wages paid during her employment the Department commenced an investigation which resulted in the Department issuing a decision letter to Mr. Gregory Allen Lowrey (Lowrey) who, along with his wife Kita Lowrey, are the only identifiable principals connected to Happy Valley Tattoo and Piercing by the record in this case.

The Department letter found that Lowrey had not furnished documentation to establish that the Internal Revenue Service (IRS) had made a determination that Happy Valley met the necessary requirements to be considered an exempt religious organization. The Department also determined that the organization was not entitled to an exemption under Utah law. Lowrey appealed the Department determination for an Administrative Law Judge hearing.

Since there is insufficient documentary evidence in the record to establish any legal entities other than Happy Valley and Lowrey, for simplicity in this decision the Board will use Happy Valley when referencing the employing unit and Lowrey when referencing the principal of all of the entities involved in this case.

As the appealing party in this matter, Lowrey has the burden of establishing by a preponderance of the evidence that the Judge erred in his decision upholding the Department's finding the Claimant's work for Happy Valley was covered employment under the applicable law and rules. In order to prevail the record must be found to support Lowrey's position that Happy Valley was the DBA (doing business as) alter-ego of a religious organization, and that its employees were engaged in exempt employment and therefore not eligible for unemployment insurance benefits under state and federal law.

As stated above, for this decision "Lowrey" will, for the purposes of this decision, be used as an alternative reference inclusive of Gregory Allen Lowrey, Kita Lowrey, UBU Ministries, Whole Life Ministries, Happy Valley Tattoo and Piercing, and The Gift of Hope, LLC.

There is no issue in this case requiring a determination of whether the Claimant, who worked as a receptionist and personal assistant for Lowrey at Happy Valley, was an independent contractor. Although Lowrey denies it in the appeal, Lowrey testified, under oath, that the Claimant had been an employee of Happy Valley. Lowrey also framed the issue for this appeal to the Workforce Appeals Board in his response to the Judge's questioning:

JUDGE Who did she (Claimant) actually perform services for, was it for the church, or for the tattoo shop?

LOWREY There – there's no difference. The – **she performed the services – she was an employee. And I don't have any – I don't have any question about, you know – or dispute about whether or not she was an employee. It's just that she – the question is who she was**

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GREGORY ALLEN LOWREY

an employee of. And so she was an employee of the church, of Whole Life Ministries. And last year we changed our name to – from Whole Life Ministries to UBU Ministries. But– (Emphasis added).

JUDGE What does UBU stand for?

LOWREY It stands for – it's UBU, uncle bob uncle, and it stands for UBU.

LOWREY In my own mind is that if - she was considered an employee all the way through to the time she was fired.

The basis of Lowrey's lengthy appeal is that the Claimant was an employee of a self-declared church, and therefore legally exempt from the payment of unemployment contributions and the employees of Happy Valley were working in exempt employment and not covered by unemployment insurance laws. Lowrey further argues that the Claimant was employed by UBU Ministries rather than either Gregory Allen Lowrey or the Happy Valley.

The only official documents contained in the record before the Board are copies of recorded filings made with the Utah Department of Commerce, Division of Corporations and Commercial Code. It is noted that under Utah law the Division of Corporations is a good-faith filing office and is only responsible for the form on which information is submitted, and has no responsibility for the veracity of the content of the filings submitted to it for recording.

The official records of the State of Utah in the appeal record reflect that UBU Ministries is purportedly a member of a Limited Liability Company (LLC) named The Gift of Hope, LLC. The records further show that Happy Valley Tattoo and Piercing has been registered as a DBA since October 30, 2001, with Gregory Lowrey listed as the Registered Agent. The 2001 application for the Business Name Registration/DBA Application for Happy Valley Tattoo and Piercing shows Gregory Lowrey and Kita Lowrey as the applicant/owners of Whole Life Ministries which was to be the owner of the DBA.

The record before the Board contains no official documents on file with the Division of Corporations for the purported entities The Gift of Hope, LLC; Whole Life Ministries; or UBU Ministries. Although Lowrey had the burden of proof in this matter, it was not established that the alleged entities actually existed, beyond a snippet in Lowrey's brief purporting to be taken from the Articles of Incorporation of Whole Life Ministries.

The transcript of the hearing shows that the Judge sought information about Happy Valley having been determined to be an exempt religious organization under either state or federal law. Lowrey testified that Happy Valley had been determined to be an exempt religious organization as a result of an IRS audit, and also found exempt by the Department, but no evidence was produced to support these alleged findings, and the Department could locate no proof to support Lowrey's claims.

If Lowrey actually possessed and had produced IRS and Department determinations that Happy Valley had been ruled an exempt religious organization, it would have been conclusive proof that would have simply resolved this issue. However, instead of providing convincing evidence of any such rulings, Lowrey chooses again on appeal to the Board to reiterate the position presented at the Administrative Law Judge hearing that bits and pieces of language drawn from various IRS publications justify a reasonable claim of exemption.

The state law exempting employment such as claimed in this appeal is Utah Code Ann. §35A-4-205, which provides in pertinent part:

(1) If the services are also exempted under the Federal Unemployment Tax Act, as amended, employment does not include:

(g) for the purposes of Subsections 35A-4-204(2)(d) and (e), service performed:

(i) in the employ of:

(A) a church or convention or association of churches; or

(B) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

The above referenced Utah Code Ann. 35A-4-204(e) provides:

(1) Subject to the other provisions of this section, "employment" means any service performed for wages or under any contract of hire, whether written or oral, express or implied, including service in interstate commerce, and service as an officer of a corporation.

(2) "Employment" includes an individual's entire service performed within or both within and without this state if one of Subsections 2(a) through (k) is satisfied. . . .

(e) The service is performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if:

(i) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(8), solely by reason of Section 3306(c)(8) of that act; and

(ii) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

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In other words, the wages paid to an employee are subject to unemployment contribution payments unless excluded by 26 U.S.C. 3306(c)(8), as the only applicable exclusionary reason, if the employee requirements of (ii) are met.

The federal law referenced in the state statute, 26 U.S.C. 3306(c)(8), provides that "service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a)."

Mr. Lowrey testified that Happy Valley had never applied for recognition nor been determined to be a 501(c)(3) organization by the Internal Revenue Service, nor did he show that all of the income from Happy Valley was being used for charitable purposes as defined by the IRS. He also failed to provide any proof that Happy Valley had been determined to be exempt from the Utah unemployment insurance laws.

The IRS sets out the minimum requirements for an organization such as Happy Valley that have to be met for exemption from taxes:

Organizational Test - Internal Revenue Code Section 501(c)(3)

To be organized exclusively for a charitable purpose, the organization must be a corporation (or unincorporated association), community chest, fund, or foundation. A charitable trust is a fund or foundation and will qualify. However, an individual will not qualify. The organizing documents must limit the organization's purposes to exempt purposes set forth in section 501(c)(3) and must not expressly empower it to engage, other than as an insubstantial part of its activities, in activities that are not in furtherance of one or more of those purposes. This requirement may be met if the purposes stated in the organizing documents are limited in some way by reference to section 501(c)(3).

In addition, an organization's assets must be permanently dedicated to an exempt purpose. This means that if an organization dissolves, its assets must be distributed for an exempt purpose, to the federal government, or to a state or local government for a public purpose. To establish that an organization's assets will be permanently dedicated to an exempt purpose, its organizing documents should contain a provision ensuring their distribution for an exempt purpose in the event of dissolution. If a specific organization is designated to receive the organization's assets upon dissolution, the organizing document must state that the named organization must be a section 501(c)(3) organization when the assets are distributed. Although reliance may in some cases be placed upon state law to establish permanent dedication of assets for exempt purposes, an organization's application can be processed by the IRS more rapidly if its organizing documents include a provision ensuring permanent dedication of assets for exempt purposes. For examples of provisions that meet these requirements, see *Charity - Required Provisions for Organizing Documents*.

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GREGORY ALLEN LOWREY

If Lowrey truly believed Happy Valley constituted an exempt religious organization there are options available under both federal and Utah law to receive that official recognition. Lowrey could have applied for 501(c)(3) recognition which would have been effective until the IRS made a determination either granting or denying that recognition. Utah law also provides a means for an organization to obtain recognition of exempt status:

35A-4-313 Determination of employer and employment.

The division or its authorized representatives may, upon its own motion or upon application of an employing unit, determine whether an employing unit constitutes an employer and whether services performed for, or in connection with the business of, an employer constitute employment for the employing unit. The determinations may constitute the basis for determination of contribution liability under Subsection 35A-4-305(2) and be subject to review and appeal as provided.

R994-202-101. Legal Status of Employing Unit.

The Department may, on its own motion or if requested by an employer, determine the legal status of an employing unit according to Section 35A-4-313. The determination will be based on the best available information including, registration forms, income tax returns, financial and business records, regulatory licenses, legal documents, and information from the involved parties. The Department's determination is subject to review and may be appealed according to rule R994-508, Appeal Procedures.

The Board cannot find that Lowrey established, by a preponderance of the evidence, that Happy Valley was an exempt religious organization. Lowrey also raises constitutional issues in his brief that the Board, as an administrative tribunal, is not able to address. Constitutional issues can only be addressed in a court of law, such as the Utah Court of Appeals, to which a next level appeal would be directed.

The Board has thoroughly reviewed the testimony and exhibits in the record before it, and cannot find that the appealing party has established that the Judge erred in his decision in this case. Therefore, the Workforce Appeals Board adopts in full the reasoning, conclusion of law, and decision of the Administrative Law Judge.

DECISION:

The decision of the Administrative Law Judge holding the Claimant to have received a wage, to have been in employment, and to have not been an independent contractor for Gregory Allen Lowrey, doing business as Happy Valley Tattoo, pursuant to the provisions of §§35A-4-204 and 35A-4-208 of the Utah Employment Security Act, is affirmed.

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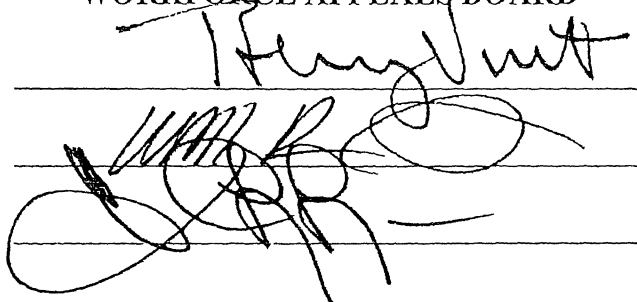
GREGORY ALLEN LOWREY

APPEAL RIGHTS:

Pursuant to §63-46b-13(1)(a) of the Utah Administrative Procedures Act, you may request reconsideration of this decision within 20 days from the date this decision is issued. Your request for reconsideration must be in writing and must state the specific grounds upon which relief is requested. The request must be filed with the Workforce Appeals Board at 140 East 300 South, Salt Lake City, Utah, or may be mailed to the Workforce Appeals Board at P.O. Box 45244, Salt Lake City, Utah 84145-0244. A copy of the request for reconsideration must also be mailed to each party by the person making the request. If the Workforce Appeals Board does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied pursuant to §63-46b-13(3)(b) of the Utah Administrative Procedures Act. The filing of a request for reconsideration is not a prerequisite for seeking judicial review of this order. If a request for reconsideration is made, the Workforce Appeals Board will issue another decision. This decision will set forth the rights of further appeal to the Court of Appeals and time limitation for such an appeal.

You may appeal this decision to the Utah Court of Appeals. Your appeal must be submitted in writing within 30 days of the date this decision is issued. The Court of Appeals is located on the fifth floor of the Scott M. Matheson Courthouse, 450 South State Street, P. O. Box 140230, Salt Lake City, Utah 84114-0230. The appeal must show the Workforce Appeals Board, Department of Workforce Services and any other party to the proceeding as Respondents. To file an appeal with the Court of Appeals, you must submit to the Clerk of the Court a Petition for Writ of Review setting forth the reasons for appeal, pursuant to §35A-4-508(8) of the Utah Employment Security Act; §63-46b-16 of the Utah Administrative Procedures Act; and Rule 14 of the Utah Rules of Appellate Procedure, followed by a Docketing Statement and a Legal Brief as required by Rules 9 and 24-27, Utah Rules of Appellate Procedure.

WORKFORCE APPEALS BOARD



Date Issued: July 13, 2010

TV/TL/WS/RR/MRM/cd

GREGORY ALLEN LOWREY

MAILING CERTIFICATE

I hereby certify that I caused a true and correct copy of the foregoing DECISION to be served upon each of the following on this 13th day of July, 2010, by mailing the same, postage prepaid, United States mail to:

GREGORY ALLEN LOWREY
275 E STATE RD
AMERICAN FORK UT 84003-2434

JACKLYN EMMETT JOHNSON
640 SPRUCE ST
PLEASANT GROVE UT 84062-3715



FAX COVER PAGE

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TO: UTAH WORKFORCE SERVICES

APPEALS UNIT
REQUEST FOR RECONSIDERATION

* APPEAL BOARD REVIEW

FAX # 801-526-9244

FROM: REV. GREGORY LOWREY
UBU MINISTRIES

PH # 248-259-2127

email - gregory.lowrey@gmail.com

1 of ~~17~~ 23

To: Utah Department of Workforce Services
Appeals Unit

From: Reverend Gregory Lowrey
UBU Ministries

RE: Request for Reconsideration of Appeals Board Decision in CASE # 10-B-00769-T

2 August 2010

I request a reconsideration of the Appeals Board Decision of this case.

There are several areas where the ALJ and the Appeals Board failed to consider matters demanded by the codes cited in the original claim that I believe would render an opposite decision if adequately considered.

For the sake of brevity, I will state what I consider to be errors in the Appeals Board Decision page by page and section by section.

I am requesting a 60 day extension for preparation of a fuller review of these issues and to acquire further documentation for my position. The IRS has agreed to send a letter that declares the tax exempt status of UBU Ministries but this will take approximately 10 days to arrive in Utah and then must be forwarded to me in Michigan before I can include it in my response.

On page 4, paragraph 1 of the Appeals Board Decision it states "If Lowrey actually possessed and had produced IRS and Department determinations that Happy Valley had been ruled an exempt organization, it would have been conclusive proof that would have simply resolved this issue."

The requirement of such evidence cannot be deduced from the original complaint and considering the statement of the Appeals Board Decision (just quoted in lines 24 – 26 of this document) it seems appropriate that I be given the opportunity to obtain and present documents that constitute such "conclusive proof" and would "simply resolve this issue".

I have such a letter en-route from the IRS and am attempting to acquire such other documentation to satisfy the Appeals Board on this issue.

Also, other issues that were not addressed by the ALJ or Appeals Board, but which are the foundation for Workforce Service's original claim, demand consideration because of incorrect and unsupported assumptions being made by Workforce Services

Apparently my initial examination of these issues was considered too lengthy and unclear.

As the code cited as the foundation of this case and referred to in both the ALJ Decision and Appeals Board Decision are critical to a correct Decision I feel it appropriate to request more time to revise my presentation of these issues to make them more comprehensible to the Appeals Board.

I will attempt to reduce the volume and increase the clarity. This will take some time which I request be allowed.

So, I am asking for a Reconsideration and also an 60 Day Extension for revision and gathering of documentation.

I am requesting a continued suspension of collection actions until a final determination is made.

It is obvious that individuals within the Department of Workforce Services are suspicious of our sincerity in our religious beliefs and practices and while I may not be able to alter those personal opinions, I do believe I can demonstrate that we do consider our religion and religious practice with all sincerity and that our beliefs and practices are accepted as legitimate (and exempt) by the IRS and other branches of Federal and Utah

government.

While everyone has a right to their own opinion, not even judges have the right to give their personal opinions the force of law. Constitutional protections are in place to insure that such discrimination is not allowed. The judges may not rebel against the Constitution.

I am simply asking for an clear and unbiased reading and honest application of the law.

I feel that the Department of Workforce Services attempts to give their personal biases the force of law.

This is accomplished in part by:

Making unsupportable claims to powers not given by the codes cited by Workforce Services. See Decision pg.6, par. 2 and 3. (examined later in this document)

Refusing to examine any of the codes cited by the Department in this case except the one that was never in dispute. (Definition of Employment)

Refusal of the Department to consider or abide by Federal, State and Constitutional limitations on the scope and application of Department authority. (examined throughout this document)

Creating a circle of confusion as both the ALJ and the Appeals Board repeatedly contradict themselves from one paragraph (and Decision) to another. (examined throughout this document)

Padding the Decision by misrepresentation (eg. "The Department could not find" when it is a matter of record that the Department did not look.)

The Department also did not find any evidence to support the claims of the field auditor, even when such evidence was provided to the field auditor and also included in the Exhibits for the ALJ.

Refusing to examine or acknowledge evidence and witnesses provided by appellant.

Pretense of the Appeals Board to ignorance of the very codes they purport to administer, define the scope and limits of their authority and legal restrictions on their actions in regards there-to.

Directing appellant to an upward spiral of courts to decide matters that an unbiased assessment would have made clear from the very beginning. (first and foremost that the entire proceeding is outside Workforce Services Jurisdiction)

Additional improprieties analyzed in following pages and in a followup document.

I will outline areas in the Appeals Board Decision that I feel need reconsideration and will keep my present commentary to a minimum, reserving a fuller, but more pointed and concise commentary for a later followup.

Because some supporting documents have not yet been received I will hold additional documents (listed in appendices) to submit with my followup document.

FROM THE APPEALS BOARD DECISION:

Page 1

History Of Case:

Claimant worked as a receptionist and general assistant for UBU Ministries and not Gregory Allen Lowray

Claimant was an employee but claimant's employment is not subject to unemployment insurance coverage.

Issue Before Workforce Appeals Board and Applicable Provision of Utah Employment Security Act:
Section 35A-4-204 is not satisfied as per section (2),e,ii.

Both 2,e,i and 2,e,ii must be satisfied for this section of code to apply. (see page 4 of Appeals Board Decision)
This section is critical to a correct Decision on this matter.

I addressed this issue in the original appeal but it was ignored by the ALJ.

Perhaps I could revisit this issue in a manner that would be more clear.

Section 35A-4-205 relating to Section 35-A-204(2)(D) & (E) does apply in this case, which the documentation I am receiving from the IRS will demonstrate. (see page 4 of Appeals Board Decision)

113 Factual Findings:

114 Workforce Appeals Board does not as declared, "adopts in full the factual findings of the ALJ". There are
 115 findings of the ALJ that the Appeals Board decides differently and which call into question the entire case against
 116 Lowrey and Happy Valley Tattoo. I would like to address these differences and contradictions.

117
 118 Pg. 2

119 Paragraph 2

120 "The Department letter found that Lowrey had not furnished documentation to establish that the IRS had made a
 121 determination etc."

122 This is not true. I did provide what should have been ample documentation directly from the IRS which was
 123 rejected without examination by the ALJ who then misrepresented both the position of the IRS, Utah and Lowrey.

124
 125 Originally cited by Lowrey include:

126
 127 Exhibit 33, IRS Publication 1828, titled *Internal Revenue Service Tax Exempt and Government Entities*
 128 *Exempt Organizations*, subtitled *tax guide for Churches and Religious Organizations*, citing pgs. c-2, 2,3,
 129 provides definitions of exempt religious organizations, exemption from filing for official IRS recognition (501.c.3)
 130 and test for 501.c.3 applicants. (find document online at <http://www.irs.gov/pub/irs-pdf/p1828.pdf> and appended
 131 to this document.

132
 133 Exhibit 34, IRS Publication 557, titled *Tax-Exempt Status for Your Organization*, citing pages 2, pg. 9 *Annual*
 134 *Information Returns lines 1-5* explaining exempt organizations do not file annual reports, pg. 11 *Employment*
 135 *Tax Returns* explaining that churches are exempt from FUTA and how churches may exempt themselves from
 136 FICA., pg. 20 defining 501.c.3 organizations and *Application for Recognition of Exemption*, describing the
 137 documents required and test applied for those who use IRS form 1023, *Application for Recognition of*
 138 *Exemption*, pg. 21, column 3, *Organizations Not Required To File Form 1023*, describing organizations who
 139 are "exempt automatically if they meet the requirements of section 501.c.3 (see pg 20) – UBU Ministries does
 140 meet the requirements described. pg. 22 *Organizational Test*, defines meeting this test by inclusion in Articles of
 141 Incorporation certain language referencing provisions of 501.c.3 which UBU Ministries does. Defines documents
 142 accepted by IRS as organizational documents (Articles of Incorporation and By Laws). pg. 26, column 3
 143 *Religious Organizations* defines guidelines IRS uses "to determine whether an organization meets the religious
 144 purposes test of section 501.c.3", being, "1) That the particular religious beliefs of the organization are truly and
 145 sincerely held. And 2) That the practices and rituals associated with the organization's religious belief or creed
 146 are not illegal or contrary to clearly defined public policy." UBU also meets this test. Continued in Exhibits
 147 35-37

148
 149 I will revisit this documentation with more clarity and provide additionally a letter of exempt status from the IRS.

150
 151 Paragraph 3

152 States that "there is insufficient documentary evidence in the record to establish any legal entities other than
 153 Happy Valley and Lowrey" when in fact there was presented by both the Department and Lowrey Utah
 154 Department of Corporations documents which do establish legal entities. The standard for the IRS and for Utah
 155 Workforce Services claims to authority require only Articles of Incorporation and By-Laws. The Appeals Board's
 156 rejection of the Utah Department of Commerce filings undermine the legal status of all corporations and religious
 157 organized via incorporation.

158
 159 Both the Department and Lowrey provide evidence that shows a primary error in the Department's case against
 160 Lowrey and Happy Valley defining who owns the DBA Happy Valley Tattoo etc. Workforce Services
 161 determination to reject all evidence showing Happy Valley to be owned by a religious organization for religious
 162 purposes only supports Lowrey's contention that Workforce Services is motivated by personal bias. The
 163 ownership relationship is clearly demonstrated by multiple documents collected by both the Department and
 164 Lowrey and as these are the only documents offered by any parties, there is no evidence to the contrary.

165
 166 In asking for an extension for acquiring further documentation, one document I am seeking to obtain from the
 167 Utah Department of Commerce stating the legal weight of incorporation filings. This is important since the
 168 Appeals Board devalues the legal status of Department of Corporations filings.

As Department of Commerce documents are the only organizational documents required by the IRS and by the code cited as the Department Authorizing Code by the Appeals Board 35A-4-313 and R994-202-101 (which do not extend Workforce Services authority to religious organizations) the Department of Commerce filings must stand as authoritative.

Paragraph 4

"Lowrey has the burden of establishing....that the Judge erred in his decision.....etc." "In order to prevail the record must be found to support Lowrey's position that Happy Valley was the DBA alter ego of a religious organization ...etc"

These records were provided but were both ignored, misinterpreted and dismissed by the ALJ and the Appeals Board as treated in the previous paragraph. A full copy of the Articles of Incorporation and By-Laws of UBU Ministries is included as an appendix to the proposed followup.

Pg 3

From transcript:

I don't know why the name of the church is a matter of interest here, but since it is made a point of by the Appeals Board I will address it briefly.

UBU stands for You Be You.

The guiding principle of this religion is "Our relationship with, interpretation and practice of our spirituality is personal and derived from the Law of Reciprocity and the Golden Rule." From "Statement of Beliefs" UBU Website <http://www.ubu-ministries.org/p/beliefs.html>

UBU teaches that as individual creations and expressions of God our primary responsibility is to be true to God's expression in our individual creation. Just as every flower is not a rose, we have an obligation to be true to the measure of our individuality as a creature of God. Thus, the exhortation, "You Be You" (UBU).

Tattoos and piercings are also seen by UBU to be personal and intimate affirmations of the self just as the wearing of a cross, temple garments, etc. are.

Tattoo and piercing have an over 30,000 year documented history as just such religious emblems in all cultures and on all continents, including Hebrew and Christian culture (and even practiced briefly by LDS (about 1950) where tattoos were administered by the church in the Logan, Utah Tabernacle) (see <http://www.conelrad.com/atomicsecrets/secrets.php?secrets=11>)

In most of recorded history tattooing and piercing are reserved exclusively as religious emblems, have deep personal meaning as spiritual emblems and can be applied only by religious leaders. The fact that our culture allows sacred acts to be performed in non-religious settings and with non-religious connotations does not take the spiritual aspect away from those who maintain the orthodox view of such spiritual expression any more than an atheist wearing a cross as a decoration takes away the meaning and validity of a cross as a spiritual emblem from those who consider it such,

Aside from tattooing and piercing as spiritual services and a few other defining doctrines, UBU Ministries would not appear much different from other churches. I contend that it is only the local bias against this one spiritual practice that engenders the opposition of "the Department", the rejection and/or dismissal of our exhibits and denial of our 1st Amendment rights.

I believe "the Department" is simply practicing "religion on religion" discrimination and thus far appears determined to ignore or subvert any law that prevents such discrimination.

I believe that a simple and sincere examination of the IRS and Utah Tax Codes would easily decide in favor of UBU. So far "the Department" refuses to do this.

I request that an honest reconsideration is in order.

Paragraph 1

"The basis of Lowrey's lengthy appeal is that claimant was an employee of a self-declared church..."

Nowhere does Lowrey claim that UBU Ministries is a "self-declared church".

UBU Ministries is a legally organized, incorporated church according to Utah law and is registered with the IRS as a legitimate religious organization.

225
226 Workforce Services shows no evidence whatsoever to demonstrate their claim that claimant was employed by
227 Lowrey or Happy Valley and disregards, the claimants own statement on the intake application, her employment
228 contract and payroll records that indicate conclusively that she was employed by UBU Ministries and not by
229 Lowrey or Happy Valley.
230
231 Paragraph 2
232 The Division of Corporations states conclusively that the formation of an Incorporation (which UBU Ministries
233 satisfies) creates a separate individual in law. I am gathering evidence for this legal standing from the
234 Department of Incorporation to refute this opinion of the Appeals Board that Incorporation has no legal standing.
235
236 Paragraph 3
237 The Lowreys are not the owners of UBU Ministries as the Appeals Board contends.
238 UBU is a separate entity as proved in applications and filings with the Utah Department of Commerce.
239 The position of the Lowreys as incorporators does not make them owners, nor does it confer upon them
240 personal liability for the actions of the incorporation.
241 The position of Lowrey as the registered agent does not confer on him any responsibility beyond acting as a
242 contact for the corporation for purposes of correspondence with the Dept. of Commerce and does not confer on
243 him any authority in the corporation or liability for its actions.
244
245 Paragraph 4
246 There was no indication in the original Department decision or the directions for the ALJ appeal to indicate that
247 such records would be of value. I will provide full articles of incorporation and by-laws. The "snippet" referred to
248 here and elsewhere are in response to the instructions in the ALJ Appeal brochure which suggests that only
249 relevant portions of documents be included to address specific issues and that other portions be excluded
250 (snipped). This "snippet" was only included as an indication of the purpose of the incorporated entity as
251 demanded by the IRS definition of subcontractors, which issue was never addressed by the ALJ even though it
252 is critical to the Departments claim to section 35A-4-204(e)(ii) and was examined in detail in documents provided
253 by Lowrey, but apparently ignored in the ALJ appeal. See Exhibits 18, 25, 26, 27 also see letter Appeal of
254 Decision of Administrative Law Judge, case 09-A-19944-T, dated 2 June 2010, line 599 - 613.
255
256 Paragraph 5
257 In approaching "the Department" to seek documentation of a previous Workforce Services exemption it appears
258 that I was mistaken in my belief that such exemption existed. It must have been a different Tax Department
259 exemption that I was thinking of.
260 The statement that UBU had undergone an IRS audit was again in reference to the IRS rules regarding
261 subcontractors and was intended merely as an aside, but I am trying to get the IRS agent to issue a statement
262 regarding that audit and the IRS is mailing me a statement showing UBU's exempt status.
263
264 That "the Department could locate no proof to support Lowrey's claims" suggests that the Department sought
265 such proof, but that is not the case.
266
267 Statements such as this abound in the ALJ and Appeals Board Decisions and are simply implications that
268 misrepresent the fact that such proofs were not sought as proved in the ALJ Appeal, where the field auditor
269 admits that her views are based entirely on the statements of the claimant during intake and not on any
270 "investigation" aside from a Dept. of Commerce search and viewing the Happy Valley Tattoo website.
271 The details of the "investigation" performed by the field agent are contained on one handwritten page of notes.
272 (Exhibit 17)
273 There is no evidence presented to support any of the claims of the Department aside from the one uncontested
274 claim of employment.
275 The Department does however dispute its own evidence showing such employment to be by a church.
276 (Exhibit 3)
277
278 The exhibits the Department provides from the Dept. of Commerce and the Happy Valley Website both support
279 the view of Lowrey and put the Department in the position of rejecting what limited evidence they obtained on
280 their own as well as rejecting wholesale over 20 pages of exhibits provided by the Department and over 30

pages of exhibits provided by Lowrey.

Pg 4

Paragraph 1

This was addressed already, but I am preparing to offer such documentary evidence from the IRS. Regarding the statement that I "presented.....bits and pieces of language drawn from various IRS publications", I will again state that I was only following the directions in the Workforce Services Appeals Brochure to snip documentation to include only relevant portions. That I still came up with several pages of examination of less than half a page of cited code would suggest that they were more than "bits and pieces".

Had they been examined, it would have been obvious that the citations were full citations of every relevant reference made in the code cited by the Department.

That is, I chased down every defining reference given in each code to illustrate exactly what the cited code means.

They were not irrelevant "bits and pieces" from various publications as implied by the Appeals Board Decision but were completely relevant and critical to a correct decision in this matter.

If the code is cited, a correct understanding of that code should be important.

I will re-write this examination to make it more clear and comprehensible as to what leads to what, even though I included the exact texts and website references for every document I offered.

I am only addressing the Tax code cited by the Department and the IRS documents that state the official IRS position regarding exempt organizations. The IRS states repeatedly that churches are automatically exempt and do not need to apply for official recognition (501.c.3).

This means that the Department's contention that failure to apply for 501.c.3 invalidates a church's claim to tax exemption is simply wrong.

The truth on this matter is unavoidable for those who will simply read what the IRS provides.

To claim the IRS as the basis for the Appeals Board Decision and then to ignore the clear statement of the IRS is just wrong.

Paragraph 2

I addressed this in my notes regarding pg 1

Suffice it to say for the time being that 35A-4-204(e)(i) demands that both subsection (i) and (ii) be satisfied for this code to take effect.

Subsection (ii) demands "four or more individuals in employment" for the section to have effect.

I claimed, records show and witnesses (which the ALJ refused to hear) support that UBU never employed more than one employee.

The Department offers no proof whatsoever that there was more than one employee.

The claimant was the only employee.

The appeal to this code - the basis of the Department's claim - fails.

Pg 5

Paragraph 1

continues from page 4 and points out exactly what I addressed in regards to page 4, paragraph 2 (above). The employee requirements of (ii) are not met and no evidence is offered from the Department to the contrary. This is another area that I was prepared to discuss in the ALJ Appeal but that the ALJ refused to consider. It is thoroughly covered in the exhibits 18, 25 - 27 and as treated in the following section regarding IRS 26 U.S.C. 3306(c)(8).

Paragraph 2

References IRS statute 26 U.S.C. 3306(c)(8) which is examined in its entirety in ALJ appeal exhibit 43.

Section (c) states

"(c) Employment

For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of sub-chapter C of chapter 9 of the Internal Revenue Code of 1939 under the law

337 applicable to the period in which such service was performed, and "
338 subsection 8
339 "(8) service performed in the employ of a religious, charitable, educational, or other organization described in
340 section 501 (c)(3) which is exempt from income tax under section 501 (a); "
341 The examination of the references such as section 501(a) and the references cited in that reference is what the
342 Appeals Board refers to as "bits and pieces of language drawn from various IRS publications" on pg 4,
343 paragraph 1 of the Appeals Board Decision.
344 The Appeals Board appears to not care for an accurate understanding of the codes they purport to administer.
345 If they did they would find that this code does not apply to UBU Ministries or to their claims in this case as they
346 would find that both part 1 and part 2 must be met and that part 2 is not met on two different criteria: 1) there
347 were not 4 or more employees, and 2) the code applies only to define who is an employee to determine who
348 must pay dividends on retirement trust plans and does not provide a general definition of "employers" as the
349 Department claims. The code is irrelevant to the case at hand.
350 So not only does the code not apply, but even if the Department wants to force application, subsection (ii) fails in
351 regard to UBU and with it the entire case against UBU, Gregory Lowrey or Happy Valley Tattoo (take your pick).
352 It simply fails - period.
353 I was prepared to examine this in the ALJ Appeal, but the ALJ could not be bothered with it even though it was
354 the foundation for the Department's case.
355 You can find the examination in exhibits 39, 42-45 of the ALJ Appeal.
356 Since this is the foundation of the case and it fails on examination, it deserves an Reconsideration.
357
358 Paragraph 3
359 Again, this was amply addressed by direct citation from the IRS.
360 The Appeals Board has no problem finding portions of the IRS code but somehow cannot see other parts which
361 define the code in a manner that does not fit the bias of the Department.
362 This is difficult to understand since there are many significant references in the exhibits I prepared drawn just
363 from page one (among others) of the document they use (IRS Publication 501).
364 The Appeals Board cites the Organizational Test for non-profit organizations (not churches - though churches
365 may apply) and does not seem to realize that this test only applies to those organizations that have applied for
366 IRS recognition.
367 Churches, by IRS definition, are automatically exempt and do not need to apply for recognition.
368 The IRS has a different test for such organizations.
369 See exhibits 33 - 37
370 However, the Department, ALJ and Appeals Board only assume that UBU fails to pass the IRS tests.
371 They offer no investigation or proof of any kind beyond their assumption in this matter.
372 I contend as I did in the ALJ Appeal, that even though UBU is not required to submit to this test that UBU passes
373 the test in every regard anyway.
374 I also contend that it is the responsibility of the Department to demonstrate their claims are true rather than for
375 Lowrey to prove that they are false.
376 The burden of proof is on the Department and they have offered none.
377
378 Pg 6
379 Paragraph 1
380 Here the Appeals Board offers what amounts to personal opinion, not a legal one, that if Lowrey was sincere in
381 his religious beliefs, he would have sought IRS recognition and since Lowrey did not choose to seek such
382 recognition, it follows that his beliefs are not sincere.
383 There are several problems with this.
384 The first I suppose is that the entity being dealt with should be UBU Ministries, a legally incorporated entity (a
385 person) under the law and not Lowrey.
386 Also, the Appeals Board is apparently blind to the IRS code that does not support their view which states quite
387 clearly and repeatedly that churches such as UBU do not need IRS recognition as they already possess tax
388 exempt status as an UNALIENABLE RIGHT recognized (not granted) by the United States Constitution, which
389 must be honored by the States (Utah included).
390
391 Paragraph 2
392 Reference to Utah Code 35A-4-313 (cited in full)

The Department may determine who is an employer and it has never been disputed that the claimant was employed by UBU Ministries.

All documents including the intake application, payroll documents and employment contract show this to be the legal relationship.

For the Department to claim that Gregory Lowrey or Happy Valley Tattoo was an employer requires some proof which the Department has failed to produce and which cannot be produced since no such proof exists.

Paragraph 3

Reference to Utah Code R994-202-101

The Department may determine the legal status of an employer.

The Department chooses to only reference the opening portion of this section and further reading shows that this section to which they appeal contradicts the Appeals Board claim made on page 3 of their Decision.

This code identifies several types of "legal status" that the Department may consider including (1) Sole Proprietorship, (2)(a) Partnership, (b) Limited Partnership (LP) and Limited Liability Partnership (LLP), (3) Corporation, (4) Limited Liability Company (LLC), (5) Trust, (6) Association, (7) Joint Venture, (8) Estate. These are the only types of employer status the Department is allowed to consider and a definition of each is given.

UBU is a corporation, and while the Appeals Board claims that (Decision pg 3) "The only official documents in the record before the Board are copies of recorded filings made with the Utah Department of Commerce, Division of Corporations and Commercial Code. It is noted (but no citation is given in support) that under Utah law the Division of Corporations is a good-faith filing office and is only responsible for the form on which information is submitted, and has no responsibility for the veracity of the content of the filings submitted to it for recording."

Yet, Utah Code R994-202-101 in authorizing the Department to make such determination states that their proof is:

"(3) Corporation.

A corporation is a legal entity granted a state charter legally recognizing it as a separate entity having its own rights, privileges, and liabilities distinct from those of its owners. The corporation is the employing unit.

Corporations must be registered and in good standing with the Utah Department of Commerce."

There is no other method of determination or judgment allowed in this code.

And nowhere do the cited codes (or any other code for that matter) give the Department the authority to determine what is and is not a church.

This code, cited by the Appeals Board countermands their claim that Gregory Lowrey has liability as an employer as the cited code clearly states that the corporation is "a separate entity having its own rights, privileges, and liabilities distinct from those of its owners"

So, these two codes give them the right to determine who is an employer (in this case UBU Ministries) and what kind of employer they are (Corporation).

And that is all

There is no code that allows them to determine what is and is not a church.

There is no code that allows them to arbitrarily re-assign ownership of DBA's to suit their prejudiced purposes.

The code they cite clearly states that the determining factor is the Department of Commerce. No other is mentioned in the law.

The Department of Commerce clearly states that Happy Valley Tattoo is a DBA owned by UBU Ministries and UBU was formed for Religious Purposes.

Gregory Lowrey is simply the Registered Agent and not the Owner.

If that were not enough, the Department, ALJ and Appeals Board who all claim to have considered all exhibits, completely disregard Exhibits 33-37 defining IRS description of w 501.c.3 organizations and automatic exemption - in detail and Exhibits 46 - 49 detailing the United States Supreme Court Decision stating that Departments, ALJ's and Appeals Boards do not have the right to determine what is and is not religion or religious activity as well as Exhibit 21 detailing a Utah Tax Case where the Supreme Court Decision played the deciding role in the affirmative for the defendant.

Even a simple reading of IRS 501.c.3 itself reveals that as a religious corporation (determined by Dept. of Commerce) UBU qualifies as a 501.c.3 organization. It should be noted that in 501.c.3 no mention of Official IRS Recognition is even made. Such recognition is separate, non-defining and strictly optional.

I will include IRS 501.c.3 for the convenience of the Board.

449 "TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter F > PART I > § 501
450 § 501. Exemption from tax on corporations, certain trusts, etc.
451 (c) List of exempt organizations
452 The following organizations are referred to in subsection (a):
453 (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for
454 religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or
455 international amateur sports competition (but only if no part of its activities involve the provision of athletic
456 facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which
457 inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is
458 carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in
459 subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of
460 statements), any political campaign on behalf of (or in opposition to) any candidate for public office."
461
462 Note that nowhere in this section 501.c.3 does it require such organizations to apply to the IRS for exemption or
463 for recognition of exemption. It clearly states that such organizations ARE IN FACT EXEMPT.
464
465 UBU's statement of purpose in its articles of incorporation show that UBU is in full compliance with this code.
466 This is the "snippet" referred to by the Appeals Board and is included in the original appeal.
467 No evidence is supplied by the Department to show that UBU is not in full compliance with this code.
468
469 Paragraph 4
470 The Board cannot find - only because it is unwilling to, as the 55 exhibits, two hours of testimony and 16 pages
471 of Appeal Review Application amply detail, consider the facts instead of clinging to their prejudices. They here
472 state that Lowrey raises Constitutional issues that they are not able to address, but that can only be addressed
473 in a court of law.
474
475 Yet, I provided a United States Supreme Court Decision that clearly states they cannot do what they did.
476
477 It has been already decided in a court of law.
478
479 I provided the entire decision (no snippets).
480
481 Is the Appeals Board unable (or unwilling) to comprehend IRS Code, Utah Employment Security Code and a
482 United States Supreme Court Decision, even when an example of the use of that decision in a Utah Tax Case is
483 provided?
484
485 Are YOU JUDGES required to take an oath of office to uphold and support the United States Constitution?
486
487 If so, you should be able to comprehend its principles and you are obligated to support them or be in violation of
488 the 14th Amendment, sec. 3. among others.
489
490 Paragraph 5
491 If the board "thoroughly reviewed the testimony and exhibits in the record", it should have decided that the ALJ
492 has not erred in this case?
493
494 Paragraph 6
495 Decision
496 Even though the Appeals Board admits, (showing that the ALJ in fact was in error - so much for paragraph 5!)
497 that UBU Ministries was the owner of the DBA Happy Valley Tattoo (Appeals Board Decision, pg 3, paragraph 3)
498 and Gregory Lowrey was simply the Registered Agent, here in the decision they go back to the claim (can't they
499 make up their mind???) that Gregory Lowrey is DBA Happy Valley Tattoo - contrary to their own statement and
500 plentiful evidence (ALJ Exhibits 1,5,6,7,8,9,31,32) and they claim that the "provisions of 35A-4-204 and 35A-4-
501 208 of the Utah Employment Security Act, is affirmed" when it is obvious from a simple reading of those acts
502 that they are indeed NOT affirmed!
503
504 Pg 7

505 Reconsideration of the Appeals Board Decision based on 63-46b-13. Agency review – Reconsideration.
 506 (1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior
 507 agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action,
 508 any party may file a written request for reconsideration with the agency, stating the specific grounds upon which
 509 relief is requested.

510 (b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial
 511 review of the order.

512 (2) The request for reconsideration shall be filed with the agency and one copy shall be mailed to each party
 513 by the person making the request.

514 (3) (a) The agency head, or a person designated for that purpose, shall issue a written order granting the
 515 request or denying the request.

516 (b) If the agency head or the person designated for that purpose does not issue an order within 20 days after
 517 the filing of the request, the request for reconsideration shall be considered to be denied.

518 I am requesting a Reconsideration of the Appeals Board Decision.
 519 I have set forth my reasons and the grounds I feel demand a reconsideration.

520 I request a 60 day extension to acquire the needed documentation sought by the Appeals Board and to further
 521 set forth the grounds for reconsideration and errors in the previous decisions.

522 I would like a stay on collection by the Department until a final decision is rendered or until a minimum of 60 days
 523 past the 20 days allowed in case my Reconsideration is denied by failure of the Appeals Board to respond 63-
 524 46b-13(3)(b). (September 21st)

525 I request a written response regarding my request for reconsideration, extension and stay of collection.

526 Sincerely,
 527 Reverend Gregory Lowrey
 528 UBU Ministries

529

530

531

532 Attachments:

533 Exemption Letter From IRS – arrived today and is included with this Request

534 Additional Attachments (provided with future update)

535 Whole Life Ministries (UBU) Articles of Incorporation – INCLUDED

536 Whole Life Ministries (UBU) By-Laws – INCLUDED

537 Whole Life Ministries to UBU Ministries Name Change – INCLUDED

538 IRS Publications 557 and 1828 (relevant pages)

539 Department of Corporations documents

540 Other documents as may apply

541

542 Copy To:

543 Reverend Steven Bosh, UBU Ministries

544 David Holdsworth, Attorney

545 Eric Treene, Special Counsel for Religious Discrimination, United States Department of Justice

546 United States Department of Justice, Civil Rights Division

547 American Civil Liberties Union

548 Jacklyn Emmett Johnson – 640 Spruce St. - Pleasant Grove, Utah 84062-3715

549

550

OGDEN UT 84201-0038

In reply refer to: 0441986857
July 28, 2010 LTR 4163C E0
87-0665317 000000 00
00036872
BODC: SB

UBU MINISTRIES
% GREGORY LOWREY
275 E STATE RD
AMERICAN FORK UT 84003-2434

001640

Employer Identification Number: 87-0665317
Person to Contact: D BRIDGEWATER
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

This is in response to your July 19, 2010, request for information regarding your tax-exempt status. We have no record that your organization has been recognized as exempt from Federal income tax under Internal Revenue Code section 501(a).

Churches, their integrated auxiliaries, and conventions or associations of churches that meet the qualifications for exemption are automatically considered tax exempt under section 501(c)(3) of the Code without applying for formal recognition of such status. No determination letters are issued to these organizations. Refer to Publication 1828, Tax Guide for Churches and Religious Organizations, Publication 557, Tax Exempt Status for Your Organization, and our website, www.irs.gov/eo for the organizational and operational requirements if you feel you meet these requirements.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely yours,



Rita A. Leate
Accounts Management II

4853529

FILED

NOV 20 2000

**ARTICLES OF INCORPORATION
OF
WHOLE LIFE MINISTRIES**



Utah Div. Of Corp. & Comm. Code

We, the undersigned natural persons all being of the age of eighteen years or more, acting as incorporators under the Utah Non-Profit Corporation and Cooperative Association Act, adopt the following Articles of Incorporation for such Corporation:

Article I

The name of the corporation is Whole Life Ministries

Article II

The period of duration of this corporation is perpetual.

Article III

The specific purposes, but not limited to, for which the corporation has been formed are:

(a) To act and operate exclusively as a nonprofit religious corporation, church and mission society pursuant to the laws of the State of Utah in accordance with the Constitution and the Bill of Rights of the United States of America, to act and operate exclusively as a religious nonprofit corporation exclusively for charitable, religious, educational, social and scientific purposes including for such purposes but not limited to, the making of distributions to organizations that qualify as exempt organizations or to other individuals or organizations according to the provisions of the corporation and to act and operate as an ecclesiastical charitable organization in lessening the burdens of government, providing relief of the poor and distressed or underprivileged, and promoting social welfare by reducing unemployment through economic development.

(b) To engage in any and all activities and pursuits and to support or assist such other organizations as may be reasonably related to the foregoing and following purposes. To solicit and receive contributions, purchase own, lease and sell real and personal property, to make contracts, to invest corporate funds, to spend corporate funds for corporate purposes, and to engage in any activity "in furtherance of, incidental to or connected with any of the other purposes."

(c) To engage in any and all other lawful purposes, activities and pursuits, which are substantially similar to the foregoing and which are or may hereafter be authorized by Section 501(c)(3) of the Internal Revenue Code and are consistent with those powers described in the Utah Nonprofit Corporation and Cooperation Association Act, as amended and supplemented,

(i) No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these articles and to establish individual or group stewardship for charitable, administrative, religious, educational, social or scientific purposes and provide for the basic support, transport and housing of certain officers, agents, members or non-members in furtherance of their duties as determined by the corporation including additional incidentals to the services performed and obligations incurred;

(ii) No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office except as such involvement is construed to directly or indirectly act in furtherance of the purposes of the corporation and according to such laws as govern the activities of such corporations as authorized under the Internal Revenue Code of 1954, as amended;

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NOV 20 2000

Utah Div. Of Corp. & Comm. Code

Receipt # 172533

(iii) The corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under 501(c)(3) of the Internal Revenue Code of 1954, as amended (or the corresponding provision of any future United States Internal Revenue law).

(d) The corporation shall engage in any and all other lawful purposes, activities and pursuits which are substantially similar to the foregoing and which are or may hereafter be authorized by law and exercise any powers that are in furtherance of the purposes of said corporation and asserts the right and intention to participate in any and all activities and exercise any powers allowed to individuals or corporations under the law.

Article IV

The corporation shall not have any class of members or stock.

Article V

Provisions for the regulation of the internal affairs of the corporation shall be set forth in the By-Laws.

Article VI

The number of trustees of this Corporation shall be three (3), or more than three, as fixed from time to time by the By-Laws of the Corporation. The number of trustees constituting the present Board of Trustees of the Corporation is three, and the names and addresses of the persons who are to serve as trustees until their successors are elected and shall qualify are.

Gregory Allen Lowrey
241 North 200 West
Lehi, Utah 84043

Katrina Ann Lowrey
241 North 200 West
Lehi, Utah 84043

Christina Ann Hille
241 North 200 West
Lehi, Utah 84043

Article VII INCORPORATORS

The names and addresses of the Incorporators are:

Gregory Allen Lowrey
241 North 200 West
Lehi, Utah 84043

Katrina Ann Lowrey
241 North 200 West
Lehi, Utah 84043

Christina Ann Hille
241 North 200 West
Lehi, Utah 84043

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Article IV

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Article V

Provisions for the regulation of the internal affairs of the corporation shall be set forth in the By-Laws.

Article VI

The number of trustees of this Corporation shall be three (3), or more than three, as fixed from time to time by the By-Laws of the Corporation. The number of trustees constituting the present Board of Trustees of the Corporation is three, and the names and addresses of the persons who are to serve as trustees until their successors are elected and shall qualify are:

Gregory Allen Lowrey
241 North 200 West
Lehi, Utah 84043

Katrina Ann Lowrey
241 North 200 West
Lehi, Utah 84043

Christina Ann Hille
241 North 200 West
Lehi, Utah 84043

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241 North 200 West
Lehi, Utah 84043

Katrina Ann Lowrey
241 North 200 West
Lehi, Utah 84043

Christina Ann Hille
241 North 200 West
Lehi, Utah 84043

**Article VIII
REGISTERED OFFICE AND AGENT**

The address of the corporation's initial registered office shall be:

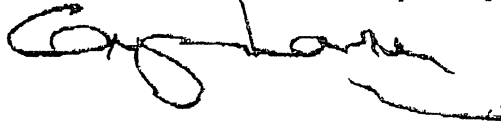
241 North 200 West
Lehi, Utah 84043

Such office may be changed at any time by the Board of Trustees without amendment of these Articles of Incorporation.

The corporations initial registered agent at such address shall be:

Gregory Allen Lowrey

I hereby acknowledge and accept appointment as corporate registered agent:



Notary Initial 

**Article IX
PRINCIPAL PLACE OF BUSINESS**

The principal place of business of this Corporation shall be 60 West Main Street, Lehi, Utah 84043

The business of this Corporation may be conducted in all counties of the State of Utah and in all states of the United States, and in all territories thereof, and in all foreign countries as the Board of Trustees shall determine.

**Article X
DISTRIBUTIONS**

No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III hereof. No ~~substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence~~ legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these Articles of Incorporation, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as amended or supplemented, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, as amended or supplemented.

Article XI
DISSOLUTION

(a) Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of the code regarding ecclesiastical corporations (Section 501(c)(3) of the Internal Revenue Code, as amended or supplemented) and within the stated purposes of said corporation, distribution to be by a panel selected from the directorate as per the by-laws of said corporation and exclusively for such purposes to such individuals, organization or organizations, as said panel shall determine, which are organized and operated exclusively for such purposes and/or to be directed by the statement of purpose and by-laws of said corporation..

(b) If no directors may be found to conduct said distribution, a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located may pursue the following resolutions:

(I) Members and/or agents may be empanelled according to the provisions of the corporation by-laws to effect such distribution.


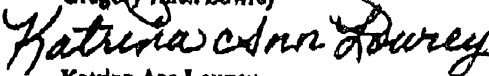
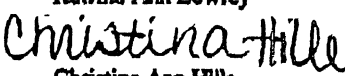
(II) If no members or agents may be found to effect such distribution, relatives of members or other interested parties may be empanelled by said Court, to effect such distribution.

(III) At no time shall assets of said corporation be distributed to the federal government, or to a state or local government, for any purpose.

(iv) In the event all other remedies for proper disbursement fail, disbursement shall be made by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located or by the agent or agents specifically appointed by such court, directly and without cost, to the poor of the community in which the corporation is then located.

In Witness Whereof, We, Gregory Allen Lowrey, Katrina Ann Lowrey, Christina Ann Hille, have executed these Articles of Incorporation in duplicate this 15th day of November, 2000, and say:

That they are all incorporators herein; that they have read the above and foregoing Articles of Incorporation; know the contents thereof and that the same is true to the best of their knowledge and belief, excepting as to matters herein alleged upon information and belief and as to those matters they believe to be true.

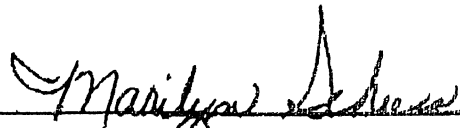

Gregory Allen Lowrey

Katrina Ann Lowrey

Christina Ann Hille



Subscribed and sworn to before me this 15 day of Nov, 2000

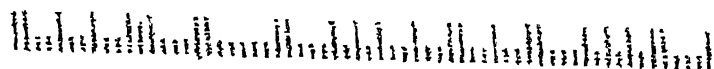
State of Ut.

County of Ut.

Notary Signature 
Type or Print Name of Notary Marilyn Schiess
My commission expires 6-23-2004

Entity Type: Corporation - Domestic - Non-Profit
Entity Number: 4853629-0140
Issue Date: November 20, 2000
Access Code #: 3157364

UBU MINISTRIES
GREGORY ALLEN LOWREY
275 E. STATE RD.
AMERICAN FORK UT 84003



CERTIFICATE OF REGISTRATION



State of Utah
Department of Commerce
Division of Corporations & Commercial Code

This certifies that this entity has been filed & approved and has been issued a registration number in the office of the Division and hereby issues this Certification thereof.

By-Laws
of
Whole Life Ministries
an
Domestic, Non-Profit Utah Corporation,
4853629-0140 Est. 11-20-2000

Registered Agent - Gregory Allen Lowrey
Registered Address - 241 North 200 West, Lehi, Utah County, Utah 84043

By-Laws governing the internal structure and management of Whole Life Ministries
Adopted and effective by vote of the full Directorship November 18, 2004

ARTICLE I. IDENTITY

These are the Bylaws of the above named Whole Life Ministries, a non-profit religious corporation organized pursuant to the laws of the State of Utah.

ARTICLE II. PURPOSES AND POWERS

Section 2.01. The Corporation is organized exclusively for religious purposes as defined in the Articles of Incorporation.

Section 2.02. All the powers authorized and permitted by The State of Utah for such corporations shall be the powers of this Corporation, together with such powers as granted to the Corporation by the state statute which governs such corporations, as amended from time to time.

ARTICLE III. GOVERNANCE

Section 3.01. The Corporation shall look to these Bylaws, the Articles of Incorporation, guidance of the Board of Directors ("the Board"), the *WLM Corporate Directives* and the laws of this state with reference to non-profit religious corporations, and Section 501(c)(3) of the Internal Revenue Code (as amended from time to time) for guidance in the operation of its affairs.

Section 3.02. Where these Bylaws conflict with The Board, The Board shall control.

Section 3.03. The Society shall maintain a current Operational Guide (*WLM Corporate Directives*) detailing the procedures and current customs of the Society operations as well as the duties and responsibilities of the officers, committees, and major employees. The Operational Guide shall be maintained current by the Executive Director as determined by the Council.

The Immediate Past Chairman or the current Chairman (or his/her agent or assign) should the Past Chairman be disabled, shall review annually the Operational Guide. Revisions are approved by the Council and such changes shall be provided immediately to the corporate and division officers, committee chairpersons and management staff.

ARTICLE IV. MEMBERS

The Corporation shall have no members. It may suit the purposes of the corporation to designate a category of participation as "members" or "membership" although such members or membership shall not be construed as members in the law and have no legal rights in the corporation.

ARTICLE V. BOARD OF DIRECTORS

Section 5.01. The Board of Trustees of Whole Life Ministries shall serve as the Board of Directors of the Corporation ("the Board"), and shall be selected and serve in accordance with the provisions of the *WLM Corporate Directives* or as determined by the Board.

Section 5.02. The number of board members shall be not less than one and not more than ten.

Section 5.03. Qualifications and constitution of the Board, their term in office and their method of election, removal and replacement shall be flexible as determined by the needs of the board, requiring demonstrable commitment to the aims of the corporation. Board members may be removed from office by a majority vote of the board, ratified by the Chairman, or by Executive action. The offices of Chairman and Vice-Chairman may not be terminated, but only voluntarily resigned by design of that officer or his/her agent should s/he become unable to attend to business without such assistance.

Section 5.04. The property, equipment, insurance coverage, bequests, and trusts of the Corporation shall be managed by the Board.

ARTICLE VI. Administrator/Administrative Council

Section 6.01. The Administrator or Administrative Council shall have general oversight of the administration and program of the Corporation in pursuing the primary task of the Corporation.

Section 6.02. The Administrator or membership on the Administrative Council shall be as determined by the Board or by Executive directive.

Section 6.03. The Administrator or Administrative Council shall be directly subject to the Chairman and/or Vice Chairman who shall hold respectively the positions of President and Senior Vice President of such council.

ARTICLE VII. OFFICERS

Section 7.01. The Board of Directors shall elect from its membership, to hold office for the lifetime of the officer or until s/he resigns or is deemed unable to satisfy the demands of the position and until their successors shall be appointed or elected, an Executive Director/Chairman of the Board, Vice-Chairman, who shall be Senior Directors of the Corporation and shall serve with any other Directors as the officers of the Corporation. A board member or employee may be elected or appointed or contracted to serve as secretary.

Section 7.02. Officers may be removed from office at any time by a majority vote of

the Board, as then constituted, notwithstanding the fact that the term for which s/he may have been elected has not expired. No cause need be assigned for any removal under this section.

Section 7.03. The Executive Director/Chairman and Vice-Chairman may be removed from office only by voluntary written consent to such removal and are exempt from removal by vote.

Section 7.04 The office of Executive Director holds discretionary powers in exercising the duties of that office as established in the *WLM Corporate Directives*.

Section 7.05. Any vacancy in any office may be filled by the Board at any regular or special meeting or by other method according to the *WLM Corporate Directives*.

Section 7.06. The Executive Director shall preside at all meetings of the Board. The chairperson shall execute all contracts authorized by the Board and shall perform such other duties as are incident to the office or properly required of him/her by the Board.

Section 7.07. The vice-chairperson shall perform the duties of the chairperson in the absence or disability of the chairperson. In addition, the vice-chairperson shall have such powers and discharge such duties as may be properly assigned to him/her, from time to time, by the Board.

Section 7.08. The secretary shall keep a record of all proceedings at the meeting of the Board, give notices, have custody of the corporate seal, attest when necessary the signature of the chairperson, affix the seal to all instruments required to be executed under seal and as authorized by the Board, attend to any and all filings required by state law, and maintain the corporation's records. The secretary shall have such other powers and perform such other duties as are incident to the office or properly required of him/her by the Board. The secretary may be assisted by other board members as required.

Section 7.09. The Board may elect a treasurer(s) to serve as the treasurer(s) of the Corporation. If such person is not already a member of the Board, then s/he shall not have a vote but rather shall serve as an *ex officio* member of the Board, without vote. Should the board elect to operate without a treasurer, another board member may be assigned the duties of treasurer by vote of the Board.

Section 7.10. The term of service for Board Members and Officers other than the Chairman and Vice-Chairman shall be renewed every three years and/or according to the *WLM Corporate Directives*.

ARTICLE VIII. MEETINGS

Section 8.01. The Board of Directors shall meet at least annually, at the call of the chairperson of the Board, at such times and places as shall be designated in a notice provided to each Board member at a reasonable time prior to the appointed time of the meeting. The notice may be by mail, bulletin, telephone, fax machine, e-mail, instant message or any other valid method of communication in accord with state law should such previous measures be unavailable or fail of function. The notice shall include the date, hour and place of all such meetings. Notice may be waived, as provided for in the discretionary powers of the senior director or by other provision of the *WLM Corporate Directives*.

Section 8.02. An organizational meeting of the Board shall be held within thirty days after the beginning of the ensuing calendar or conference year, for the purpose of electing

officers for the ensuing year and transacting any other business properly brought before it.

Section 8.03. A quorum at any Board meeting shall consist of a majority of the Board, as constituted at the time of such meeting. The acts approved by a majority of those present at any meeting, at which a quorum is present, shall constitute the acts of the Board of Directors, except where a greater than majority vote is required by state law or the *WLM Corporate Directives*.

Section 8.04. Conference calls and electronic meetings. Votes by email or web forum are prohibited except as simultaneous video of each absent officer thus attending/voting is an incident to such meetings and votes.. Meetings may be held by conference call if all members can simultaneously hear one another.

ARTICLE IX. INDEMNIFICATION

The Corporation is authorized to indemnify its officers and directors to the full extent permitted by state law.

ARTICLE X. CONTROLS

Both the Chairman and Vice-Chairman may execute legal documents and provide signatures required for checks either individually or together as law or circumstance require. Other controls over financial transactions and transfers of corporate assets shall be described in the *WLM Corporate Directives*.

ARTICLE XI. AMENDMENTS

These Bylaws may be amended by a two-thirds vote of the full Board (as then constituted) at any meeting of the Board, provided that the notice of such meeting clearly sets forth the proposed changes which are to be considered.

ARTICLE XII. DISSOLUTION

Should the Corporation cease to exist, the title to all its property shall be resolved according to the *WLM Corporate Directives* and the articles of incorporation.

ARTICLE XIII. CURRENT OFFICERS

Section 13.01. Current officers of the corporation are:
Executive Director/Chairman, Gregory Allen Lowrey
Director/Vice-Chairman, Katrina Ann Lowrey
Acting Secretary/Treasurer, Katrina Ann Lowrey
Director/Trustee -- Christina Ann Hille

Effective as of 19 November 2004 by vote of the Board of Directors.

Katrina Lowrey
Secretary

11-19-04
Date



State of Utah
DEPARTMENT OF COMMERCE
Division of Corporations & Commercial Code
Articles of Amendment to Articles of Incorporation (Non-Profit)

4853629-0140

AMENDMENT

File Number:

New Form State Power, Reg. Fee: \$5.00

This form must be type written or computer generated

Pursuant to UCA §16-6a part 10, the individual named below causes this Amendment to the Articles of Incorporation to be delivered to the Utah Division of Corporations for filing, and states as follows:

1. The name of the corporation is: Whole Life Ministries
2. The date the following amendment(s) was adopted: 01 January 2009
3. If changing the corporation name, the new name of the corporation is:
UBU Ministries

4. The text of each amendment adopted (include attachment if additional space needed):

It is adopted by the unanimous vote of the board of directors that the name of the ministry be changed to UBU Ministries effective ASAP to Jan 01, 2009.

5. Indicate the manner in which the amendment(s) was adopted (mark only one):



The amendment was adopted by the board of directors or incorporators without member action and member action was not required.



The amendment was adopted by the members AND the number of votes cast for the amendment by each voting group entitled to vote separately on the amendment was sufficient for approval by that voting group.

6. Delayed effective date (if not to be effective upon filing) _____ (not to exceed 90 days)

Under penalties of perjury, I declare that this Amendment of Articles of Incorporation has been examined by me and is, to the best of my knowledge and belief, true, correct and complete.

By: [Signature] Title: CEO

Dated this 07 day of January, 2009

Under CRAMA (63-2-201), all registration information maintained by the Division is classified as public record. For confidentiality purposes, you may use the business entity physical address rather than the residential or private address of any individual affiliated with the entity.

Mailing/Filing Information: www.corporations.utah.gov/contacts.html Division's Website: www.corporations.utah.gov

State of Utah
Department of Commerce
Division of Corporations and Commercial Code

I hereby certify that the foregoing has been filed
And approved on the 13 day of Jan 2009
in the office of the Division and hereby issued
a certificate therefor.

Examiner: [Signature] Date: 1-26-09



[Signature]
Kathy Berg
Division Director

File # 4853629-0140
Record Number 4853629-0140

Form BRDEC

WORKFORCE APPEALS BOARD
Department of Workforce Services
Division of Adjudication

GREGORY ALLEN LOWREY

Employer No. 4-40433-0

:

Case No. 10-R-01014-T

:

RECONSIDERATION

DEPARTMENT OF WORKFORCE
SERVICES

:

DECISION OF WORKFORCE APPEALS BOARD:

Employer's request for reconsideration is denied.

HISTORY OF CASE:

In a letter faxed August 2, 2010, Employer, Gregory Allen Lowrey, requested reconsideration of the decision of the Workforce Appeals Board issued in this case on July 13, 2010. The decision of the Workforce Appeals Board was based on a review of a decision of an Administrative Law Judge after a formal hearing.

JURISDICTION OF WORKFORCE APPEALS BOARD:

The Board has jurisdiction to review the request for reconsideration pursuant to Utah Code Annotated §63-46b-13(3) on the grounds that the Board's decision was final agency action within the meaning and intent of that section of law.

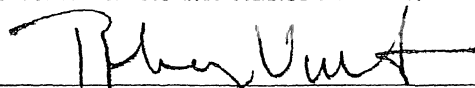
DECISION:

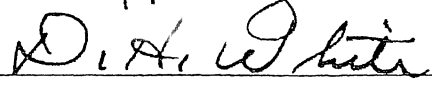
The Employer's request for a 60-day extension of time and request for reconsideration is denied. The decision of the Workforce Appeals Board dated July 13, 2010, remains in effect.


APPEAL RIGHTS:

You may appeal this decision to the Utah Court of Appeals. Your appeal must be submitted in writing within 30 days of the date this decision is issued. The Court of Appeals is located on the fifth floor of the Scott M. Matheson Courthouse, 450 South State Street, P. O. Box 140230, Salt Lake City, Utah 84114-0230. The appeal must show the Workforce Appeals Board, Department of Workforce Services and any other party to the proceeding as Respondents. To file an appeal with the Court of Appeals, you must submit to the Clerk of the Court a Petition for Writ of Review setting forth the reasons for appeal, pursuant to §35A-4-508(8) of the Utah Employment Security Act; §63-46b-16 of the Utah Administrative Procedures Act; and Rule 14 of the Utah Rules of Appellate Procedure, followed by a Docketing Statement and a Legal Brief as required by Rules 9 and 24-27, Utah Rules of Appellate Procedure.

WORKFORCE APPEALS BOARD







Date Issued: August 25, 2010

TV/TL/WS/RR/MRM/cd

10-R-01014-T

- 2 -

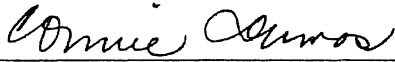
4-40433-0
GREGORY ALLEN LOWREY

MAILING CERTIFICATE

I hereby certify that I caused a true and correct copy of the foregoing DECISION to be served upon each of the following on this 25th day of August, 2010, by mailing the same, postage prepaid, United States mail to:

GREGORY ALLEN LOWREY
275 E STATE RD
AMERICAN FORK UT 84003-2434

JACKLYN EMMETT JOHNSON
640 SPRUCE ST
PLEASANT GROVE UT 84062-3715



2011/10/11 ADDENDUM

APPEALS ADJUDICATION

SEP 22 2010

U.D.W.S.

Your Name GREGORY A. LOWREY
Address 621 St Louis St
Ferndale MI 48220
Phone Number 248-259-2127

LEGAL SECTION

SEP 22 2010

U.D.W.S.

IN THE UTAH [SUPREME COURT] [COURT OF APPEALS] (circle one)

PETITION FOR REVIEW

GREGORY A. LOWREY,
Petitioner,
vs. WORK FORCE APPEALS BOARD
STATE OF UTAH DEPARTMENT OF
WORKFORCE SERVICES
(Agency) Respondent.

Appeal No. _____
Agency Decision No. 10-R-01014 - T

Notice is hereby given that GREGORY A. LOWREY (your name), petitioner,
petitions the Utah [Supreme Court] [Court of Appeals] (circle one) to review the
[order] [decision] (circle one) of the respondent made in this matter on 8-25-2010 (date).

This petition seeks review of the entire [order] [decision] (circle one).

OR

This petition seeks review of such part of the [order] [decision] (Circle one) that states
that

Petitioner requests the court to direct the respondent to prepare and certify to the
court its entire record, which shall include all of the proceedings and evidence taken in
this matter.

Gregory A. Lowrey
(signature)

CERTIFICATE OF SERVICE

I, GREGORY A. LOWREY (Name) hereby certify that on 9-20-2010 (date) I served a copy of the attached Petition for Review upon the party(ies) listed below by [mailing it by first class mail] [personal delivery] (Circle one) to the following address(es):

JACKLYN JOHNSON
640 SPUCE ST.
PLEASANT GROVE UT 84062

and a true and correct copy of the foregoing Petition for Review was [deposited in the United States mail] [hand delivered] (Circle one) to the agency listed below:

STATE OF UTAH
DEPARTMENT OF
WORKFORCE SERVICES
140 E. 300 SOUTH
PO BOX 45288
SALT LAKE CITY UT 84145-0288

By: Gregory A. Lowrey
Signature

Dated this 9-20-2010.

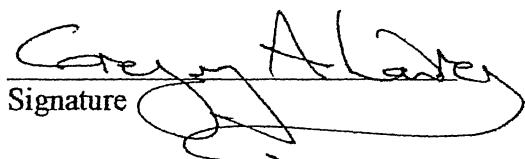
CERTIFICATE THAT NO TRANSCRIPT IS REQUIRED

Your Name: GREGORY A LOWREY
 Address: 621 ST LOUIS ST
Ferndale MI 48220
 Phone Number: 248-259-2127

WORKFORCE APPEALS BOARD IN THE STATE OF UTAH DEPARTMENT OF WORKFORCE SERVICES

<u>GREGORY A. LOWREY,</u>)	
Petitioner,)	CERTIFICATE THAT
)	TRANSCRIPT IS
vs. WORKFORCE APPEALS BOARD)	NOT REQUIRED
STATE OF UTAH DEPARTMENT OF)	
WORKFORCE SERVICES,)	Agency No. <u>10-R-01614-T</u>
Respondent.)	Appellate Court No. _____

Petitioner GREGORY A. LOWREY (Petitioner), certifies to the court that no transcript will be requested in the above entitled case. BECAUSE THE TRANSCRIPT HAS ALREADY BEEN PREPARED AND WILL BE INCLUDED IN THE RESPONDENTS RECORD.

Signature 

CERTIFICATE OF SERVICE

I, GREGORY A LOWREY (your name) hereby certify that on 9-20-2010 (date) I served a copy of the attached Certificate that Transcript is Not Required upon the party(ies) listed below by [mailing it by first class mail] [personal delivery] (Circle one) to the following address(es):

JACKLYN JOHNSON

640 SPRUCE ST.


PLEASANT GROVE UT 84062

STATE OF UTAH
DEPARTMENT OF
WORKFORCE SERVICES
APPEALS BOARD

140 E. 300 SOUTH
PO BOX 45288

SALT LAKE CITY UT 84145-0288

By:


Signature

Dated this 9-20-2010.