

FATAWA AWQAF 2007

Changing the Use of a Waqf School

Subject: Charter School Designation/Use of a Waqf Islamic School Building

From: Mujeeb

Sent: Tuesday, May 15, 2007 9:44 AM

QUESTION

Charter Schools are being increasingly considered by "Islamic" schools across the country. There does not seem to be much concern about the Charter School concept itself or its operation. However, when an "Islamic" school is to be converted into a Charter School, a question of Fiqh arises:

Can a Waqf property built by Muslim donors specifically for imparting Islamic education and promoting Islam be used for the explicit purpose of non-religious education with a binding commitment to not promote any religion?

Would it be proper for the Fiqh Council to address this and related questions!

First, let me briefly describe what a Charter School is?

A charter school is a public school of choice which operates independently of local school districts. Charter schools are non-sectarian and must follow rules and regulations governing civil rights and health and safety issues. Charter schools are allotted per-student tax dollars for operating revenue and generate additional funding through private and corporate donations as well as state and federal grants. No tuition is charged. Answers to frequently-asked questions about charter schools in Texas can be found at <http://www.tea.state.tx.us/charter/faqs/faq.html>.

Additionally, a Charter school is a non-profit 501(c)(3) organization, and has the same status as NAIT and ISAT for that matter. Also, as you are probably already aware of, ISAT has already built and operating an Islamic School on its premises. Based on Charter Schools Rules and Requirements, the current status of NAIT and ISAT, the inquiries with the Tarrant County Appraisal District, and the recommendation of our legal advisor, there is no risk of any complications with the property tax exemption or other exemptions for that matter.

I also just wanted to add that in Arlington, and many other cities in the US, most of the Charter Schools (above 90%) are sponsored by Religious Organizations with a non-profit 501(c)(3) status. All of these Religious Organizations are sectarian in nature propagating their religious believes.

JazakaAllahu Khairan,
Mujeeb

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi
wa Ashabihi Ajma'in

Dear Br. Mujeeb

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Yes, it is permissible to use the building of an Islamic school for a charter school provided the decision making of the new school is kept in the hand of the Islamic organization, including appointment of teachers and staff and the management continue to use the building, after program, for additional classes on Islamic education and teaching. In this way it becomes a part of Da'wah to the non-Muslim students.

Islamic education, for which the school was established and the building is devoted, covers the program of the American schools plus Da'wah and teaching Islamic tenets, therefore there is no violation of the covenants of Waqf in converting to a charter school with the above mentioned conditions (these conditions are normally fulfilled).

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Sale of Waqf Property

SUBJECT: Selling Waqf House

From: Br. Mansoor through Islam on line

Sent: Sunday, December 02, 2007 4:35 AM

QUESTION

Assalamu Alaikum. We kindly request you to provide us a fatwa on the following issue. We have got one house and a property connected to this house which was done Waqf by our great grand father. As per the Waqf deed it states that this house is only meant for stay for his wife , all his three children, their children, and then daughters of his grand daughters (Sons from the second generation are excluded.) and daughters of their

daughters and so on . And the earnings of the attached property has to be used for the expenses for this house such as lighting, taxes, donations, etc. This house and property has to be managed by the eldest in the female descend and if that chain ends then the eldest male in the family. And if the entire family became any more then it has to be given for charity or some religious schools. This house should not be sold or transferred but they can use it as their home. As per the tradition in that area husband has to stay in his wife's house. Similarly all the male children will go out of home to their wives home upon their marriage. As time went the family became big and could not able to stay together and his three children including my grand mother decided to sell this house and buy three houses in order to avoid any inconvenience. Thus my grand mother bought a house for her share and invested approximately similar amount of that house by her own for renovation for the convenience of her entire family. My grand mother got 5 children 2 daughters and 3 sons. Now my grand mother died and all her children left home to their own houses and this house became vacant. Kindly let's know what we have to do with this house, whether we can sell it and divide among the children of my grand mother in 1:2 basis as per Shari'ah or has to be maintained by the original Waqf deed? Can someone do such Waqf which will deprive one's dependants their share according to Islamic rule? Is our first decision to sell the original Waqf house was forbidden? If so is there any religious remedy? If it cannot be divided, can we withdraw the amount invested as mentioned above? If so how? Awaiting your kind advice. Jazakum Allahu Khairan for your constant help
Yours,

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mansoor

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

It is really difficult to give a specific Fatwa without actually reading every line of the Waqf document. However here are some points that are important:

1. The Waqf of the great grand father "for female only....." is permissible because apparently under the circumstances it was done it is not discriminatory. Usually discrimination is done against females and he was favoring them....
2. The action of grand mother in selling that Waqf for the purpose of replacing it for another that suits the different

families after family growth was also correct and it seems that (at least this is more precautionary) she intended to make it Waqf even with the additional investment she added to it. But if we have clear and undisputed evidence that she intended to have the addition normal property (no Waqf) this additional amount can be treated as normal estate of the grand mother (I doubt that this is appropriate).

3. Waqf is an action a person makes on one's property. Of course an owner can do it because an owner is fully authorized over his/her property and potential heirs have no minute right to interfere. If I own a property I can do whatever pleases me with it... This is the law and this is the Shari'ah too.
4. Under the circumstances, it seems that the existing property, all of it, is a Waqf for that specific purpose that was established by the original founder. IT CANNOT BE SOLD OR DISTRIBUTED. It must only be used for the purpose it is assigned to and if that purpose is no more in existence, it must be used for charity as specified in the Waqf document. It can be replaced (sold and money put in escrow and then another property be purchased for the whole amount or more with someone paying the additional amount like what grand mother did) provided the purchased property should be made Waqf and used for the same purpose as in the document.
5. If there is no more users in accordance with document, the property can then be disposed of as mentioned in the documents to Islamic charities or schools. IT CANNOT BE DISTRIBUTED AS INHERITANCE TO HEIRS BY ALL MEANS.

Wa Allahu A'alam
Wa Alhamdu Lillahi Rab al Alamin
Wassalam
Prof. Dr. Monzer Kahf

Waqf for Qurbani

SUBJECT: Creating a Waqf for Qurbani

From: lubna

Sent: Thursday, July 12, 2007 12:19 AM

QUESTION:

Dear brother Monzer,

Assalamu alaykum,

I pray this message reaches you in good health and in a high state of iman. You may recall I have contacted you in the past with questions relating to Waqf and legacies and you have kindly

provided detailed responses to these enquires. I pray you will be able to assist me further.

From our previous communications, you will be familiar with Islamic Relief's Waqf programme. Donors are asked to make a one-off donation which is then invested. The annual profits derived from this capital are then used towards project implementation. This ensures the continuity of the Waqf investment year on year.

The price of each Waqf share is calculated with Qurbani waqf in mind i.e., the annual profits derived from each share should at least be equal or exceed the amount required to perform a Qurbani. I wonder if you can advise what the majority ruling is regarding Qurbani Waqf. i.e., if a person is to invest in a Qurbani Waqf share does this absolve them of the responsibility of performing a Qurbani in the month of Dhul Hajj each year.

We know already that the majority opinion is that Zakat funds cannot be used to make payment for Waqf so does this also apply to Qurbani?

Obviously there may be times where Islamic Relief may not be able to fulfill its obligation in performing a Waqf Qurbani in the months of Dhul Hajj. Such as the case in 2006 where two months of Dhul Hajj fell in one Gregorian calendar year. Waqf profits were not sufficient to cover two Qurbani's.

In such cases Islamic Relief would inform the donor of its inability to perform a Waqf Qurbani and give them the option instead on performing a regular Qurbani for that particular year. Your feedback would be much appreciated and I look forward in anticipation to your response.

Jazakallah Khair

With warmest wishes

Wassalam

Lubna

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Lubna

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

While the ideas of Qurbani and Waqf are both noble and generous I think combining them together may not be the best idea!

I argue that although the Qurbani is only Wajib according to Hanafi and Sunnah according to others, it requires an intention each time you perform it and it therefore does not work in combination with Awqaf that is done in one intention to give the principal of which the objective is derived. In other words, each time a Ibadah of qurbani is done it requires its own intention

while the Waqf is permanent and its objective is fulfilled in absentia of the founder, the Waqif. This means that the Qurbani slaughtered on behalf of the Waqif requires a personal intention from the offerer even if it were to be done by proxy through an agent, a thing that can't be done by a Waqf approach that has only one intention when the Waqf is founded. An extension of this matter: if you accept Waqf for the Wajib/Sunnah of Qurbani, you will end up doing it on behalf of the deceased (should the Waqif die before next Qurbani) who are not called on to make this Sunnah/Wajib!

On the other hand, it is certainly a very noble idea to make a Waqf special to give food and may be new cloth on the Day of Eid to the poor that borrows from the idea of Qurbani and takes it as a Qurbani-like Waqf

Wa Allahu A'alam
Wa Alhamdu Lillahi Rab al Alamin
Wassalam
Prof. Dr. Monzer Kahf
