

Legal Counsel for Churches

Corporate Governance for Churches and Their Leaders



Special Notice

Effective July 1, 2018, the Legal Counsel for Churches newsletter will be circulated by email and online downloads only. This is the last edition of Legal Counsel for Churches to be distributed in the mail via the US Postal Service.

We will offer church ministries and leaders two ways to continue receiving copies of Legal Counsel for Churches. First, if you send us your email with your contact information, we will add you to our email list. Secondly, new Legal Counsel for Churches editions can be retrieved from our website.

Thank you for your prayers and support. We look forward to continuing to serve your legal needs.

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Hospitality Contracts Can Be Distasteful



We recently received a contract from a client asking us to review the terms for its reasonableness. Our client was seeking catering and hospitality services from a hotel. The organization was planning a social event that included a banquet and overnight lodging for its guests.

This is not an unusual scenario for churches. Churches often host social events that include catering and overnight accommodations. Most of these arrangements call for hiring third parties to provide some of the services. In these instances, the church may be presented with a hospitality agreement.

A hospitality agreement usually features two important types of terms. First, the Scope of Services should accurately reflect the bargain agreed upon. The Scope of Services provisions include the price, number of guests, date, time and other pertinent details. It is crucial that the agreement details be exacting.

This brings us to the second type of terms often found in hospitality agreements. These are the Standard Terms that we occasionally see in companies' contracts. Standard terms are used in a contract to establish basic understandings for what the parties may expect from each other if certain events arise. This is where we discovered a potential risk.

The agreement included an Indemnification Clause. An indemnification clause states to some degree that one of the parties agree to reimburse the other party for legal expenses and damages. In the case here, this contract sought to have my client agree to reimburse the hotel for any expenses the hotel incurs as a result of a legal claim by one of the church's guests. Let's explore the potential risks that could arise.

If one of the church's guests were to be injured on the hotel premises, the agreement would require the church to defend the hotel.

This would be the case even if the hotel is at fault. If the guest receives a legal recovery from the hotel, the agreement would have the church reimburse the hotel.

We explained the potential risks to our client. The church did not want to assume the risks of a financial penalty for acts not due to their fault. Yet, most hotels and caterers do not want to renegotiate their standard contracts unless the engagement is large enough to warrant the costs. We found a suitable result that minimized the risk to the church.

If your organization is considering an event that requires hospitality services, read the contract carefully. If you are uncomfortable with the potential risks, expenses and liability, consult with your attorney for strategies to reduce your vulnerabilities. ■



Harmless?

All Contracts Look Harmless at First.

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Church Corporations Have Specific Powers

Every so often, I get a phone call from a ministry leader asking about allowable activities for the church. In many instances, the question concerns an activity the church is considering undergoing and wants some guidance as to whether they can engage in an endeavor.

This question is answered by taking a look at two authorities. First, we must consider what activities are permitted under North Carolina state law. Secondly, a church should look at its own governing documents to see if any limitations exist. For the purposes of this article, we examine the powers granted an incorporated church by North Carolina statutory law.

Churches and ministries organized as corporations in North Carolina have specific powers granted under state law. These powers have been approved by the NC General Assembly to help corporations know what is generally allowable in this state. The law that outlines these powers is called the North Carolina Nonprofit Corporation Act.

The Act states that “Every corporation incorporated under this Chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in its articles of incorporation.” The Act goes onto to provide a list of general powers

incorporated churches may conduct. Here is a partial list of some of the activities afforded an incorporated church:

- To sue and be sued, complain and defend in its corporate name;
- To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- To make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this State, for regulating and managing the affairs of the corporation;
- To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- To make contracts and guarantees, incur liabilities, borrow money, issue its notes,

bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

- To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust, or other entity;
- To conduct its affairs, locate offices, and exercise the powers granted by this Chapter within or without this State;
- To elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;
- To pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;
- To make donations for the public welfare or for charitable, religious, cultural, scientific, or educational purposes, and to make payments or donations not inconsistent with law for other purposes that further the corporate interest;
- To impose dues, assessments, admission and transfer fees upon its members;
- To establish conditions for admission of members, admit members and issue memberships;
- To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation. ■

Legal Counsel for Churches is a service provided by M Smith Law, PLLC for members of the religious community. This periodical is intended to help churches and their officials become better prepared to address important legal and governance issues. We hope you find *Legal Counsel for Churches* a valuable resource. For each issue, we try to raise relevant issues and offer some practical alternatives. We welcome your comments and input.

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