



Legal Counsel for Churches

Corporate Governance for Churches & Their Leaders

M SMITH | LAW_{PLLC}



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Service Animals May Enter Churches



As a public place, churches have a responsibility to make their facilities accessible for all. For people with disabilities, special accommodations may become necessary.

An accommodation that could be sought from a church is the admittance of a Service Animal. The Americans With Disabilities Act (ADA) defines a Service Animal as a dog or miniature horse that is trained to do work or perform tasks for an individual with a disability. The task may be an action that benefits an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability.

Service Animals may perform tasks such as assisting individuals who are blind or have low vision with navigation, alerting individuals who are deaf or hard of hearing, provide non-violent protection or rescue, pulling a wheelchair, assisting individuals with seizures, retrieving medicines or the telephone, provide physical support such as balance or stability, and helping people with neurological disabilities.

The ADA does not restrict the kind of dog that can be a Service Animal. The dog breed could vary widely. As for miniature horses, to be a Service Animal, the horse's height must be from 24 to 34 inches measured to the shoulders. The weight of a miniature horse must generally be between 70 and 100 pounds.

It may be important for a church to know that the Federal ADA rules on Service Animals specifically exempts churches. However, North Carolina's law on persons with disabilities does apply to churches.

The reason for mentioning this here is some churches have auxiliary organizations that are not technically a religious organization. For the facilities owned by these auxiliaries, the Federal ADA and State laws govern. For churches, only the State law applies.

In NC, a public place must adhere to certain requirements when it regards Service Animals. For instance, you may not ask the handler of a Service Animal about the nature of his/her disability. You may ask if a dog or horse is a Service Animal. You may ask what the animal is trained to do. More importantly, you are to treat the person the same as any other individual.

In North Carolina, there is no requirement that the Service Animal wear a vest, harness or display identification. A person who qualifies for Service Animal admission on any premises may display a tag issued by the Department of Health and Human Services showing the animal is being trained or has been trained as a Service Animal.

The handler of a Service Animal is responsible for the care and supervision of the Service Animal. This includes toileting, feeding, grooming and veterinary care. The church is not obligated to supervise or otherwise care for the Service Animal.

Church officials should be instructed in the proper procedures should a visitor enter with a Service Animal. Others should not pet the Service Animal. These are working animals and are not to be touched unless permission is given by the handler.

A church may have a no pet policy and may want to enforce the policy with Service Animals. Service Animals should not be regarded as pets. If a guest approaches with a young puppy, don't assume it is not a Service Animal. The puppy could be in training and therefore afforded the same protection as trained Service Animals.

A trained Service Animal will normally appear calm and sit, stand or lay quietly besides the handler. A Service Animal does not solicit food or other items from the general public. A Service Animal does not bark, growl or whine unless trained to do so.

In some instances, there may be suspicion that an animal is really a pet. If the animal is disruptive, the church may ask the handler to leave or refuse entry.

The ADA and North Carolina do not consider emotional support and companion animals as Service Animals. While it is permissible for a church to allow other kinds of animals in its facilities as emotional support and companion animals, these laws do not mandate such. ■



The Moment

You realized you had not thought of all the risks.

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Damage Control for Churches



Recently, there have been highly publicized accusations of negative conduct against famous people. In some cases, there were accusations of illegal, unethical and/or immoral behavior. The results left a stain on the companies' reputations associated with these individuals.

Church leaders should accept that no organization is immune to allegations of negative conduct. The problem may arise from a scandal that involves a church official or member of the clergy. The challenge could come from a claim against the church itself. In any event, church officials may someday face the ordeal of dealing with a PR fall out from a publicized scandal.

I have observed the various corporate responses to public relations problems. The way an organization responds to a sensitive incident can spiral into a larger corporate governance nightmare. It is imperative that church leaders be prepared to address these kinds of situation.

The church should be careful how it shares information about any new dispute. In some instances, the issue may become a legal matter. If this happens, the church may want to preserve its attorney-client privilege to confidential conversations. For this reason, it may be a good idea to consult your lawyer

at the beginning of an issue to ensure all defenses are preserved.

Churches should have an action plan in place should a public relations issue come about. The plan should identify who is authorized to speak on behalf of the church. This should be someone trained in media relations. Working with members of the press is more effective if the spokesperson is prepared and experienced in such matters.

The church should consider having the talking points for different kinds of incidents prepared in advance. In the heat of a potential PR disaster, there will be little time to form a plan. The message to the congregation, stakeholders and the public should be rehearsed beforehand. It is important to only recite facts that may be freely given without legal jeopardy.

The governance implications for church leaders is two-fold. First, churches should have policies in place to help avoid the risk of bad conduct. Staff and volunteers should be trained on prudent procedures to lessen the chances of wrongful behavior. Training

for sexual harassment, dual control of assets and safety protocols should be included in the training curriculum. The church should also review its processes to reduce its exposure.

Secondly, church leaders must give an effective response to an incident. The fiduciary duty of care for leaders compel reasonable action. If it is reasonable to take a particular action, the failure to do so with care could subject the church and its officials to liability.

Some organizations' leaders have come under fire for failing to act appropriately when a scandal arose. Action does not necessarily mean the same course of direction in all situations. Church leaders should undergo an effective investigation to uncover the facts. The action taken should be what is necessary to remedy the situation.

Church leaders should understand that a public relations scandal can happen at any time. Efforts taken today to avoid a problem is the best prevention. Having a contingency plan in place that considers all legal options is the next best course of action. ■

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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