

# Legal Counsel for Churches

Corporate Governance for Churches and Their Leaders



## Some Ministers' Conversations Are Privileged

The relationship between a minister and a person seeking counseling can carry significant legal weight. It is important for church leaders to know when communications between ministers and others is privileged.

A privileged communications is one where one side may prevent the other side from divulging the information to a third party. The privilege is generally owned by the person who has the conversation with the minister. In this case, a person receiving counseling is the only one who can give the minister permission to disclose what they talked about. When the privilege applies, the minister must keep the conversation a secret under certain circumstances.

The statutory privilege between a minister and another person is limited. First, the privilege operates to prevent tattling in a court proceeding or action. A minister could disclose the content of the conversation for another purpose. The minister just cannot testify to the discussion in a court proceeding.

Under the second limitation for the privilege, only a specific kind of conversation with a minister is privileged from disclosure. For the privilege to apply, a person must have sought the spiritual counsel and advice of a minister. If the discussion was about anything else, the statutory privilege may not apply.

A review of court cases gives us a glimpse into the kinds of distinctions courts use to define privilege.

Courts have held that the communication must be confidential. A communication is confidential when no one else is expected to hear the conversation. There must be an expectation of trust and confidentiality in the communication. If other persons are present and listening in on the communication, a court may rule that the privilege was waived. If the person tells others what was spoken about with the minister, the privilege may be considered abandoned.

The privilege only applies when the communication is with an ordained or licensed minister. In one 1986 case, the court did not find the privilege applicable where the counselor was neither licensed nor ordained. The person in this instance had preached before and taught Sunday School. Still, the court found the conversation to be that between friends and not privileged.

The privilege requires the individual to seek counseling and spiritual advice from the minister. In a North Carolina case, the court denied privilege to the individual because the minister approached the individual to offer



counseling. NC statute requires the individual seeking privilege to be the one who sought the services of a minister.

The law in North Carolina only recognizes privilege for certain communications with a minister. Consequently, other conversations in the church may not have the protection of a privilege. Still, church members may want to know how their confidential conversations will be treated. A church may decide to develop a confidentiality policy for all conversations.

A confidentiality policy should be in writing and explain which church officials comes under the rule. The Policy should list the situations when a church official may reveal the

contents of a conversation and to whom. The confidentiality policy could be shared with church members prior to counseling. A confidentiality policy may list the kinds of information that will be kept private.

It is imperative that church officials preserve the trust of individuals they counsel. Setting the expectation for how information may be shared can avoid legal perils. ■

### “A Confidentiality Policy Could Be Shared With Church Members Prior to Counseling.”



# Risks Return

Some Legal Issues Can Bounce Back

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## Some Meetings Require Notice

From time to time, churches find it necessary to have meetings with their members. Membership meetings may be held to handle routine business, elect officers and/or plan for the future of the church. One of the keys to holding a successful and legal church meeting is to provide adequate notice. Notification requires a publication that a meeting will occur and what topics will be discussed at the meeting.

Generally, there are two kinds of church meetings: Annual/Regular meetings and Special meetings. North Carolina law requires churches that have members with the right to vote for directors to hold annual member meetings. A church with members may hold regular membership meetings at the times stated in the bylaws. Annual and regular membership meetings may be held at the place provided in accordance with the bylaws. If no place is stated or fixed in regards to the bylaws, annual and regular meetings shall be held at the church's principal office. At annual and regular meetings, the members shall consider and act upon such matters as may be consistent with the notice requirements.

Churches may also hold special meetings. Special meetings can be for any purpose the church deems necessary. Special meetings may be called to seek the church body's approval to purchase an asset, choose officials and amend bylaws or other matters.

There are two ways a special church meeting may be called. First, a church with members can hold a special meeting of members when the meeting is prompted by persons authorized to do so. Authorization to call a church meeting is commonly found in the articles of incorporation or bylaws.

Secondly, a special meeting can be called when at least 10% of members entitled to vote call for a meeting. North Carolina law provides that a written demand for a proposed special meeting must state the reason for the meeting, be signed, dated and delivered to the church's secretary. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office. Only those matters that are

within the purpose or purposes described in the meeting notice may be acted upon at a special meeting of members.

North Carolina law requires churches to give notice of membership meetings by any means that is fair and reasonable and consistent with its bylaws. So long as the bylaws do not prohibit it, notice can be by US Postal Service, electronic messages or announcements from the pulpit. NC law offers a safe harbor for notices that are to be considered fair and reasonable. These minimum requires include three elements.

First, a notice is fair and reasonable if the church gives notice to all members entitled to vote at the meeting the place, date, and time of each annual, regular, and special meeting of members no fewer than 10 days before the meeting. If the notice is mailed by other than first class, registered or certified mail, no fewer than 30, nor more than 60 days notice must be given before the meeting date.

Secondly, a notice is fair and reasonable if such notice of an annual or regular meeting includes a description of any matter or matters that shall be approved by the members.

Finally, a notice is fair and reasonable if the notice of a special meeting includes a description of the matter or matters for which the meeting is called.

There are situations where the church members can waive notice. In these instances, the members will allow a church meeting to continue without this formality. Members may waive any notice required by North Carolina law, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver shall be in writing, be signed by the members entitled to the notice, and be delivered to the church for inclusion in the minutes or filing with the corporate records. In addition, if a church member attends and participates in the meeting, the member waives the right to notice unless the member objects at the outset of the meeting or the raise of a particular matter.

Membership meetings are an important part of the corporate governance of a church. Church leaders can help ensure these meetings will go smoothly by providing adequate and legal notice. ■

*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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