



Legal Counsel for Churches

Corporate Governance for Churches & Their Leaders

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Church Bylaws May Invite Court Review

Ordinarily, courts are reluctant to intervene in the governance of churches for First Amendment reasons. The First Amendment Establishment Clause of the United States Constitution warns the government off becoming entangled in the inner working of churches and other religious organizations.

On the other hand, courts may scrutinize the governance of churches on issues that involve non-religious matters. Here is a recent North Carolina case that highlights this point.

In 2013, former members of New Zion Baptist Church sued the Church and its pastor, Henry Williams. The former members' claims stemmed from a dispute over the Pastor's management of Church finances and a decision by the Church in 2013 to amend the Church bylaws.

For a court to hear a case, it must have jurisdiction over the subject matter. This case was heard by the North Carolina Court of Appeals in part over the question of what authority the trial Court had to assert itself in the Church's business.

The Court ruled the Church did not follow the procedures established in its bylaws when it attempted to amend them. Because the Church bylaws included some non-ecclesiastical issues involving Church property and contract rights, the Court said it had the power to hear the lawsuit and settle the claim.

The language in the Church's own bylaws put themselves in play to be judged by the Court. Put another way, when the Church created written bylaws that govern the use of Church property and other matters unrelated to Church doctrine and religious practice, it opened the door for the Court to review whether the Church and its members followed the procedural rules created in those bylaws. The Court said the way in which the Church and its members went about amending the bylaws violated the procedures established in its own bylaws.

There was another issue brought before the Court as well in this case. This issue included a dispute over the removal and election of Church deacons and trustees. The Court recognized the Church bylaws were silent on this matter. As a result, the Court stated it could play no role in the resolution of those issues. With no neutral principles to apply, the Court had no authority to wade into when and how these church leaders were removed from office.

Churches can help insulate their practices by not including procedural matters in their governance documents. As a matter of good practice, Church leaders should periodically review their bylaws. The bylaws review should include several exercises.

First, a church bylaws review should ensure the actual processes followed by the church are consistent with the stated bylaws. As the case above illustrates, including procedural matters in the bylaws can



become problematic. Unless the procedures referenced in the bylaws have a religious purpose, enforcement of the processes could be open to Court interpretation.

Secondly, a church bylaws review should encompass the latest restatements in current law. Courts and legislative bodies are constantly changing laws. The church bylaws should stay relevant with new interpretations, court rulings and legislative actions.

Finally, a church bylaws review should reflect the ministry's evolving operations. As churches grow and become more complex organizations, the bylaws may need to keep pace with the contemporary demands of the ministry.

The case above is an example of what could happen when the bylaws include non-doctrinal matters. Make sure your bylaws do not present unintended consequences in a potential dispute. ■

Some Strings Attached

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Churches May Adopt Traffic Regulations



For many churches, parking can be a challenging issue to manage. There may not be enough parking and enforcement becomes a necessary practice. In some instances, access onto a main street of traffic can cause safety issues for its members and the public. Church leaders should understand what authority they have to regulate the flow of traffic on church property.

North Carolina law allows the governing body of any religious organization to establish rules and regulations with respect to the use of the streets, roads, alleys, driveways, and parking lots on the grounds or premises owned or under the exclusive control of such organization. To do so, the church leadership should be aware of what limitations exist in creating traffic rules.

The law states that a church must pass an appropriate resolution to effect such traffic rules. The resolution should be approved by the governing body of the church. If the church's policies are generally approved by a governing body, that same group should review, consider and vote the approval of the parking rules. In addition to the church approving the traffic regulations, the church must file copies of its traffic regulations in the office of the Secretary of State of North Carolina.

Here are some of the activities North Carolina law allows a church to regulate with its traffic rules:

- It shall be unlawful for any person to park a motor vehicle or other vehicle on the streets, roads or on the premises of a religious assembly where parking has been prohibited by the religious assembly by the erection of "No Parking" signs at each space on the street, road or on the premises where parking is prohibited. Each space in which parking is prohibited must be clearly designated as such by a sign no smaller than 24 inches by 24 inches.
- It shall be unlawful for any person to park a motor vehicle or other vehicle in a parking space on the streets, roads, or premises of a religious assembly where the parking space has been designated by the religious assembly as being limited to a named individual or to a person holding a named position with the assembly. The parking space must be clearly designated and marked by a sign no smaller than 24 inches by 24 inches.
- It shall be unlawful for any person to park a motor vehicle or other vehicle on the streets or roads of a religious assembly, except where parking is expressly designated, so as to interfere with, or obstruct the free

flow of vehicular traffic on the streets or roads within the assembly grounds.

- It shall be unlawful for any person to park a motor vehicle or other vehicle at the entrance to any driveway on the grounds of a religious assembly so as to block the driveway.
- The church may remove any vehicle parked in violation of its posted regulations. Removal may be conducted by the church, or its agents, or its employees to a place of storage. The registered owner of such motor vehicle shall become liable for removal and storage charges. The law provides immunity from civil liability that may be alleged by the vehicle owner, lienholder or other person legally entitled to the possession of the vehicle removed. The immunity does not apply if an agent of the church intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle.

Parking can be a headache for churches during services. If your church faces challenges with parking in and around your facilities, you should take a close look at your parking rules to see if you have appropriate guidance in place. ■

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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Post Office Box 27461, Raleigh, North Carolina 27611 919.362.0744 (voice) 888-321.9047 (fax) maurice.smith@msmithlaw.us © M Smith Law, PLLC 2018 All Rights Reserved.