



# Legal Counsel for Churches

Corporate Governance for Churches & Their Leaders

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## Contract Tone Predicts Vendor Relationship

Clients often ask me to review their contracts before they sign on the dotted line. It is a good practice to have a lawyer provide counsel when the church is negotiating a new agreement. In some instances, a lawyer can help the church steer clear of potential problems.

There are lots of issues an attorney looks for when helping a client with a new contract. We want to ensure the contract has all the requirements of a legal document. We ask the client to affirm that the bargain is correctly described in the product description or scope of work. We encourage the church to perform proper due diligence on the counterparty.

Negotiating a contract with a new party is more than legal technicalities. Church leaders should be comfortable with a vendor's course of conduct. This means the church should be comfortable with the way this party does business.

Understanding the performance conduct of a party cannot be overstated as an important factor. I have observed that many business disputes arose because the parties' expectations on behavior were not aligned. This often leads to feelings of mistrust, betrayal and disappointment.

Most contracts begin with friendly dealings between the church and another party. Often the church officials genuinely like the salesperson or company representative. They may find they have lots of personal interest and friends in

common. This is a nice way to start a business relationship. However, there is more that should be considered.

If the church is considering a new vendor relationship, look at the terms of the contract to get a sense of how the other party operates. In other words, carefully read the fine print. This is the boilerplate language in the agreement. It could be a mistake to dismiss these clauses as standard legal talk. There is nothing standard about a contract. Every provision, term and clause matters. Here are some tips to keep in mind.

First, churches should be on the lookout for legal traps. There are lawful terms that a party may slip into a contract that could appear innocent on the surface. These terms have real consequences and can matter greatly in a dispute. If understood, one might consider the audacity of these clauses an insult. A vendor that dares to include such language may signal how they plan to do business.

Churches should ask their lawyer to explain terms that could be ambiguous. Don't sign a document if there are any apprehensions about the meanings of the language. Contracts that are written in such a way to be vague and mysterious may be telltale signs of how the vendor treats its customers.

Secondly, most clients instruct me to help them negotiate a fair deal. My church clients are not looking to take advantage of another party. A church's lawyer should look for



balance in the transaction. If a contract gives most of the leverage to the other party, the church should wonder how further dealings will proceed.

Church leaders should be mindful that when presented a contract by an opposing party, the party's attorney probably wrote the document. The other party's attorney may not owe the church a duty of loyalty. Therefore, the church should approach the proposed contract with the attitude that it was not written for their benefit.

Finally, a party with whom the church is negotiating an agreement should be willing to discuss the terms. Take it or leave it contracts may signal to the church that the vendor will be unyielding later in its performance. Of course, negotiation power is a product of economics and choice. The lower the value of the contract, the less negotiable power the church has. If the vendor has a monopoly on the product or service, it will be difficult to alter the proposed contract.

Churches who take the time up front to assess the spirit in which a party will perform under a contract can reduce the risk of disappointments. Make sure your church leaders understand all of the terms of the deal. ■

# Risks are not Identical

Know All Your Risks Before  
Making a Decision

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## New Directors Should Undergo Orientation



Some churches and religious organizations are led by a governing body. Sometimes the governing body is called a board of directors. In some instances, one of the church ministries serve as the governing body.

Occasionally, it becomes necessary to welcome new members to the governing body. When new members are added, it becomes necessary to train the new board members on the church's policies, practices and governance. One of the best ways to equip new board members is with an Orientation Training Program.

Here is a list of topics that could be included in a New Director's Orientation Program.

*Bylaw Review* – New church directors should be familiar with each provisions in the bylaws. The bylaws is the principal guidance for governing the organization's legal aspects. The fundamental rights of members to elect church officers, vote on governance matters, choose a pastor and other essential decisions should be outlined in the bylaws. Because directors have a duty to enforce the bylaws, they must understand how the provisions work.

*Business Plan* – New church directors may not be knowledgeable about the strategic plans of the church. The Orientation program

should inform the new directors on how the church intends to fulfill its ministry and mission. The strategic business plan may include goals, metrics and timetables for key deliverables. The new directors should study the Plans and learn how each component is connected to the duties of the board.

*Policies and Procedures* – Every organization operates with rules and regulations. These rules are often expressed as policies and procedures. A director should understand how these rules guide the various ministries within the church. This goes to the legal fiduciary responsibility a director has to exercise a duty of care.

*Code of Conduct and Ethics* – Every director should understand the standards for proper conduct. A code of conduct sets forth the guidelines for what behavior is expected of directors. Ethics guidelines prescribes when a director should abstain from certain transactions and decisions. Usually, this occurs when a conflict of interest arises.

*Educational Resources* – Directors should recognize that being on a church board is unlike other ministry work. The law assigns duties to directors that make them accountable to the church members and some outsiders. As a result, directors need continuous training to learn new governance

techniques and stay abreast of the latest developments in the law. A new director should be made aware of what resources are available to help fulfill this duty.

*Core Values* – A new director should know the core values of the church in order to effectively serve on the board. The core values is the set of principles that guide the church. Because the church is a religious organization under the law, applying its doctrinal values is an important role of the board.

*The Meeting Agenda* – A new director should be introduced to the board agenda format and contents. Boards routinely have a pattern of information that is provided at each meeting. The agenda may include financial reports, minutes from previous meetings, proposals for new services and information on community trends. Helping a new director learn how to read the board agenda and discern the most important information is necessary.

A New Director's Orientation Program can be an important step in the process of ensuring effective governance for the whole church. Help your directors be their best by providing them all the necessary tools to succeed. ■

*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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