



Legal Counsel for Churches

Corporate Governance for Churches & Their Leaders

M SMITH | LAW_{PLLC}



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Fund Development a Governance Issue

Most organizations seek dependable sources of funding to fulfill their missions. Churches are no different. For some nonprofits, fundraising is a formal program within their organizations. In these instances, fund development is an important tool for attracting donations.

Fund development is a program that nonprofits often use to pursue substantial donations. These charitable gifts are often structured to fit the interests of the donors and the needs of the charity. Here's how fund development may provide a strategic benefit for a church.

Some church members may want to go beyond their routine financial support and make a capital gift. A capital gift is a significant contribution that can be used to fund an endowment or purchase a long-term asset. Capital gifts may be made during one's lifetime or included as part of an estate.

In most fund development transactions, the needs of both parties are carefully considered. The donor may have a special interest in a particular cause or ministry. In such instances, the gift may be restricted to this purpose and use.

Here's a hypothetical example.

John and Jane Doe are members of the church. It so happens Mr. and Mrs. Doe faced a heartbreaking loss of a child from substance abuse. In memory of their child, they want to fund a program to help other parents avoid a similar situation. Mr. and Mrs. Doe learned the church operates a

substance abuse clinic. Mr. and Mrs. Doe want to make a large donation to the clinic in the name of their child. They want to use life insurance proceeds to make the contribution. The church and the donors worked together to structure the gift to meet both needs.

In this example, the church has an interest in a permanent source of funding for its clinic. The donors want to contribute to a specific cause. The capital gift here accomplishes both purposes. Each party gets something in exchange for the donation.

A fund development transaction should be recorded in a legal agreement between the parties. This is particularly important because the gift often comes with conditions. Having a clear understanding of the demands of the parties is imperative to avoid future misunderstandings.

The terms in the agreement may include provisions such as publicity consents, property rights, restrictions on use and payment schedules. The contract offers both sides the opportunity to address what's important to all stakeholders.

A fund development program should incorporate the assistance of professional services. Financial planners and tax advisors can help donors arrange the assets in such a way to maximize the gift's potential. Legal counsel should be available to ensure the agreement is properly reflected in a contract. Estate planners help the donor think through various inheritance considerations.



Some capital gifts come with an expectation of what the church will do for its part. For this reason, church leaders should develop a policy that describes the terms for philanthropic gifts. The policy may outline limitations on naming rights, acceptable activities and prohibited purposes.

In some instances, an opportunity for capital gifts may come from an institution. These may include a foundation, business corporation or government agency. For such transactions, church leaders should look for any restrictions in the covenants that may impede the church's mission. It is important to know that institutional donors can be unforgiving when it comes to enforcement of grant terms.

A fund development program begins with a conversation on how to best use this kind of revenue. With good governance and clear expectations from each party, fund development can be a useful tool. ■



The Moment

You realized signing that contract was a big mistake.

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Churches Should Discuss Data Exit Clauses

Some churches enter into contracts with outside vendors for their technology needs. Vendors provide valuable services to help church operations run smoothly. Church leaders should consider how to unwind a technology contract before entering into a new arrangement.

Technology vendors provide a variety of services for churches. In some instances, the service supplier has custody of church records and files. This means the church information is stored on the vendor's computers. When the agreement ends, the disposal or handling of these records will become an important matter.

The kinds of arrangements that may include a vendor having possession of church files can vary. The services include membership data base management, payroll services and accounting/bookkeeping records. The benefits of allowing a vendor to house church records could include less maintenance costs, access to the latest software version and better data security.

No contract lasts forever. As a result, churches should ponder what happens to their records when the arrangement terminates. The church may want assurance that it will have access to its important data. Depending on the circumstances of the termination, church files could be inaccessible.



Negotiating the post-termination process in a technology contract is a vital issue. Church leaders should anticipate a day will come when the vendor and the church will part ways. An important consideration in a termination is the deconversion fees and terms.

A deconversion fee is the cost associated with transferring the church files to a new vendor. The new vendor may need the assistance of the previous provider to complete the transfer. The deconversion process often includes validating, cleanup, testing and auditing the data for transfer.

The cost of deconversion can give church leaders sticker shock. The outgoing vendor might not be inclined to be overly cooperative. At this point, the church may have lost its leverage to haggle over fees. Having such expectations in advance can help inform the church on what terms should be included in the agreement.

Some vendors may be hesitant to put a price tag on a deconversion process in advance. To be fair, the provider may not know what could be required in a conversion to every vendor. Nonetheless, an experienced vendor has likely performed a deconversion and generally knows what to expect.

Ownership of church data is a crucial issue to be explored before the deconversion discussion. If church leaders are not careful, a technology contract could assign the property rights of the information to the vendor. If this happens, the church may not have a right to its data. Under dire circumstances, a vendor could charge an extra price for a church to gain possession of its own information.

Church leaders should carefully consider the costs of entering into a technology agreement with a new vendor. Just as important, the church should ensure the contract provides sufficient protections when the deal comes to an end. ■

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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