

Legal Counsel for Churches

Corporate Governance
for Churches & Their Leaders

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January | 2021



Churches Can Face Music Rights Violations



We featured an article in the July 2015 edition of *Legal Counsel for Churches* on the topic of music copyright law. A copy of that article can be retrieved at www.legalcounselforchurches.com. We return to this subject because the pandemic has raised new concerns on this matter.

The focus of the July 2015 article was on the importance of obtaining permission to use another's works of art. This involves materials that are protected by a copyright. We put specific focus on music rights.

As a rule of thumb, anyone who wishes to use another's copyrighted materials should get permission beforehand. The permission usually comes in the form of a license. In many instances, the license involves paying a fee to the author, artist or musician. There are exceptions to this copyright restriction.

Churches may perform copyright protected works without infringement under certain conditions. Copyright law provides that the "performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly is not an infringement of a copyright."

The most important phrase to focus on is the part where it says, "in the course

of services at a place of worship or other religious assembly." A church may play other's music without fear of a copyright violation if the performance is during a service at a place of worship or assembly.

The coronavirus has changed the way many church worship services are observed. In some instances, worship services are held remotely through a video conference. Some parts of the worship services may be a replay of previously recorded content. The question for churches is whether a service viewed online is the same as a place of worship or a religious assembly.

North Carolina general statutes define a place of worship. The law states a "building that is a place of religious worship" shall be construed to include any church, chapel, meetinghouse, synagogue, temple, longhouse, or mosque, or other building that is regularly used, and clearly identifiable, as a place for religious worship. The question for the church is does streaming a prerecorded or live worship service receive the same protections.

The Religious Service Exemption in US copyright law allows churches to perform copyrighted songs during their religious services at a *place of worship*. The Exemption does not permit performances that are streamed or broadcast over the Internet. Such online services are considered to be

the distribution of a digital sound recording. Distributing copyright materials is an exclusive right of the owner.

Another situation to consider is the liability a church may face from the conduct of its congregation. For instance, a church worship service recorded by a church member and later published on social media could be regarded as a copyright violation. This is because the church member may be considered an agent of the church. A church may be held responsible for the acts of its agents.

The church may wish to warn its members from publishing portions of church services that contain licensed music without permission from the church. This may lead to a business decision by church leaders. On one hand, you want to encourage enthusiastic word of mouth about your ministry. On the other hand, you do not want to expose the church to legal liability.

Churches have two ways of avoiding a copyright violation for protected materials. First, don't use copyright materials in a broadcast of the worship service. Originally produced sermons, music and other content may be used by the church in any format. The second way to avoid a copyright violation is seek permission from the author by purchasing a license from a music rights management company. ■

Church Growth A Governance Issue

Church leaders have a fiduciary responsibility to make decisions that reflect the best interest of their ministry. This commitment is called the Duty of Care. The Duty of Care is a legal directive that corporate managers act in a reasonable manner.

What a court considers reasonable depends on how they believe others would act under similar circumstances. The Reasonableness Test is not limited to business leaders only. A court may hold church leaders to the same standard as an officer of any other organization.

Most organizations view growth as a necessary metric. Growth indicates the health and prospects of an organization. Growth allows a company to keep pace with its competitors. The increased revenue from growth provides funding for strategic investments, infrastructure improvements and rising operating expenses.

There is a pragmatic reason for church growth. The growth of new members injects new talent and funding for ministry work. A growing church is better able to fulfill its financial obligations and sustain itself for the future. Churches that cease growing often cannibalize their reserves. Dwindling resources can hamper a church's ability to operate in the long term.

Growth is often a philosophical concern for church leaders as well. The spread of their faith to unbelievers is an important

reason for reaching new audiences. In addition, churches that endeavor to serve their congregations with social programs need growth for the increasing demands of their communities. As new members join the church, the church's purpose is better able to be fulfilled. The absence of growth could lead to organizational ineffectiveness.

An ineffective organization can be seen as an indictment of the corporate leaders to fulfill the mission. When it comes to a church, stagnant growth suggests the leaders have not accomplished a key fiduciary duty to grow. For this reason, church leaders should spend a considerable amount of effort exploring strategies for growth.

Growth for most organizations require an intentional focus on expanding their businesses. These leaders must understand their markets, customer demands and craft strategies that will draw new audiences. The demand for churches may not be different.

Church leaders face the same financial realities as most organizations. Growth is an important factor. This includes understanding

what key elements of the ministry attract new members. To ensure growth for the future, churches have a duty to make decisions that help the ministry fulfill its corporate existence.

When church leaders consider growth, a few important questions should be asked. What policies and procedures exist that limit the church's ability to grow? Does the church invest enough in new technology and practices that help spur growth? How will financial stewardship be affected if growth languishes?

Church leaders should develop and monitor key metrics that measure growth. These factors include number of new members joining the church, the attrition rate of members who leave the church, demographics of new members, migration trends and attendance fluctuations. Attention to data analytics is how church leaders can gain insight into activities that affect overall growth.

Because growth is such an important governance issue for church leaders, the topic should be a regular item on board meeting agendas. Board discussions assure church leaders keep the issue of growth in focus. Furthermore, healthy strategic conversations about growth helps ensures leaders fulfill their fiduciary duty to always make the most prudent decisions for their churches. ■





The Moment

You realized your legal problems are over.

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When To Call Your Attorney

The business of running a church includes managing its risks and seizing available opportunities. It is crucial to recognize, every choice church leaders make includes potential consequences. In each instance, it is advisable for church leaders to seek knowledgeable counsel before making big decisions.

It is important to consider the potential outcomes of a transaction before entering into a business arrangement. Here are some scenarios when church leaders should consult with their lawyers before getting too far into the discussions.

Negotiating a Business Loan

Churches borrow money for a number of reasons. Sometimes the loan is for an expansion of the church building, purchase new property, make needed repairs or refinance an existing debt. A properly negotiated loan can be advantageous for the church. On the other hand, a poorly structured loan can leave the church with high costs, unreasonable covenants, limited options and severe restrictions.

A debtor's counsel can be a valuable member of the church's finance team. Your lawyer should help the leadership understand the terms of the agreements. Banking terms of art may not have the common meaning you'd normally associate with a clause. Your

attorney can explain each contract provision and, if necessary seek better terms that will benefit the church.

Signing a Contract

Churches enter into contracts for all kinds of purposes. If you look around your office, you may find contracts for office equipment, vehicle leases, credit cards, banking, computer/data services and building maintenance.

A balanced contract is one where each party is treated equally. Unfortunately, many contracts are written for the benefit of the vendor or counterparty to the church. If all parties perform as agreed, there is often no negative consequences. But if something goes awry, the terms of the signed agreement could prove problematic.

This is why churches should have contracts reviewed by their lawyers before signing. Church leaders don't know what may go wrong later. A thorough survey of the risks should be conducted. Each identified risk should be addressed in the agreement to minimize potentially bad outcomes.

Church Governance

Church leaders should adhere to sound corporate governance. Good governance ensures the business practices comply with all laws. Sound corporate governance

is a fiduciary duty for church leaders. Furthermore, a church should uphold the rights of its stakeholders.

The value a lawyer brings to this conversation is an objective review of how the law applies to a church's practices. The need for this review can arise when there is a cloud around the applicability of the bylaws, board policies and election processes. Your church lawyer can render an opinion on how he/she reads the rules. In addition, your lawyer will reveal how a court would likely see the issue based on past decisions.

Amending the Bylaws

Every church should have a set of bylaws that describe how its corporate governance is to operate.

Occasionally, churches need to amend their bylaws. Changing bylaws can be tricky. Church leaders may need to synchronize the new bylaws language with current policies, practices and evolving law.

Your lawyer can help the church craft a set of bylaws and articles of incorporation that can help protect the church from litigation, minimize risks, leverage Constitutional protections and help ensure governance efficiency. Before your church enters into a new business transaction, give your lawyer a call to make sure you have considered all the risks and opportunities. ■

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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